STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company	:	
	:	Docket No. 13-0495
Approval of the Energy Efficiency and Demand-Response Plan pursuant to Section 8-103(f) of the Public Utilities Act.	:	

INITIAL BRIEF OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION

JESSICA L. CARDONI
MATTHEW L. HARVEY
KELLY A. TURNER
Office of General Counsel
Illinois Commerce Commission
160 North LaSalle Street
Suite C-800
Chicago, Illinois 60601
(312) 793-2877

Counsel for the Staff of the Illinois Commerce Commission

December 13, 2013

TABLE OF CONTENTS

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company	:	
	:	Docket No. 13-0495
Approval of the Energy Efficiency and Demand-Response Plan pursuant to Section 8-103(f) of the Public Utilities Act.	:	

INITIAL BRIEF OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION

Staff of the Illinois Commerce Commission ("Staff"), by and through its undersigned counsel, pursuant to Section 200.800 of the Illinois Commerce Commission's ("Commission" or "ICC") Rules of Practice (83 Ill. Adm. Code 200.800), respectfully submits its Initial Brief in the instant proceeding.

I. STATEMENT OF THE CASE

Commonwealth Edison Company ("ComEd" or the "Company") filed its Energy Efficiency ("EE") Plan and testimony in support thereof on August 30, 2013. The following parties intervened: the Environmental Law & Policy Center ("ELPC"), the Natural Resources Defense Council ("NRDC"), the Citizens Utility Board ("CUB"), the Coalition to Request Equitable Allocation of Costs Together ("REACT"), the Midwest Cogeneration Association, the Illinois Industrial Energy Consumers ("IIEC"), and the Chicago Infrastructure Trust ("CIT"). Additional appearances were filed by the People of the State of Illinois ("AG") and the City of Chicago. A prehearing conference was held pursuant to notice on October 2, 2013, and a schedule was set by agreement of the parties. Testimony was pre-filed in accordance with the agreed-upon schedule by MCA, IIEC, CUB, NRDC, ELPC, REACT, AG, CIT, ComEd, and Staff. An evidentiary hearing was conducted on December 4, 2013. In accordance with the schedule as modified by order of the ALJ, this Initial Brief follows.

II. STATUTORY LANGUAGE

With respect to the Plan, the Act states:

> In submitting proposed energy efficiency and demand-response plans and funding levels to meet the savings goals adopted by this Act the utility shall:
>
> (1) Demonstrate that its proposed energy efficiency and demand-response measures will achieve the requirements that are identified in subsections (b) and (c) of this Section, as modified by subsections (d) and (e).
>
> (2) Present specific proposals to implement new building and appliance standards that have been placed into effect.
>
> (3) Present estimates of the total amount paid for electric service expressed on a per kilowatthour basis associated with the proposed portfolio of measures designed to meet the requirements that are identified in subsections (b) and (c) of this Section, as modified by subsections (d) and (e).
>
> (4) Coordinate with the [Illinois] Department [of Commerce and Economic Opportunity ("DCEO" or "Department")] to present a portfolio of energy efficiency measures proportionate to the share of total annual utility revenues in Illinois from households at or below 150% of the poverty level. The energy efficiency programs shall be targeted to households with incomes at or below 80% of area median income.
>
> (5) Demonstrate that its overall portfolio of energy efficiency and demand-response measures, not including programs covered by item (4) of this subsection (f), are cost-effective using the total resource cost test and represent a diverse cross-section of opportunities for customers of all rate classes to participate in the programs.

> (6) Include a proposed cost-recovery tariff mechanism to fund the proposed energy efficiency and demand-response measures and to ensure the recovery of the prudently and reasonably incurred costs of Commission-approved programs.
>
> (7) Provide for an annual independent evaluation of the performance of the cost-effectiveness of the utility's portfolio of measures and the Department's portfolio of measures, as well as a full review of the 3-year results of the broader net program impacts and, to the extent practical, for adjustment of the measures on a going-forward basis as a result of the evaluations. The resources dedicated to evaluation shall not exceed 3% of portfolio resources in any given year.

220 ILCS 5/8-103(f). The Act also provides that:

> No more than 3% of energy efficiency and demand-response program revenue may be allocated for demonstration of breakthrough equipment and devices.

220 ILCS 5/8-103(g).

An additional analysis is required for the 2013 submission of the electric Plan. Section 8-103A states:

> Beginning in 2013, an electric utility subject to the requirements of Section 8-103 of this Act shall include in its energy efficiency and demand-response plan submitted pursuant to subsection (f) of Section 8-103 an analysis of additional cost-effective energy efficiency measures that could be implemented, by customer class, absent the limitations set forth in subsection (d) of Section 8-103. In seeking public comment on the electric utility's plan pursuant to subsection (f) of Section 8-103, the Commission shall include, beginning in 2013, the assessment of additional cost-effective energy efficiency measures submitted pursuant to this Section. For purposes of this Section, the term "energy efficiency" shall have the meaning set forth in Section 1-10 of the Illinois Power Agency Act, and the term "cost-effective" shall have the meaning set forth in subsection (a) of Section 8-103 of this Act.

220 ILCS 5/8-103A.

The Illinois Power Agency Act ("IPA Act") provides the definitions for demand-response and energy efficiency:

> "Demand-response" means measures that decrease peak electricity demand or shift demand from peak to off-peak periods.
>
> ….
>
> "Energy efficiency" means measures that reduce the amount of electricity or natural gas required to achieve a given end use. "Energy efficiency" also includes measures that reduce the total Btus of electricity and natural gas needed to meet the end use or uses.

20 ILCS 3855/1-10.

III. FILING REQUIREMENTS

The minimum requirements for Commission approval of ComEd's Plan are set forth in Sections 8-103(f), 8-103(g), and 8-103A of the Act. Staff has reviewed the Petition, testimony, record evidence, and discovery in this Docket, and finds that while certain portions of the plan should be modified or altered by the Commission, ultimately the plan meets the minimum requirements of the Act once modified. Staff requests the Commission direct the Company to submit a Revised Plan in a compliance filing in this Docket that incorporates Staff's recommended modifications discussed herein.

Section 8-103(f) of the Act contains seven distinct subparts, each of which dictate particulars that the Company's Plan must fulfill in order to receive approval from the Commission. 220 ILCS 5/8-103(f). Staff believes that, with some modification, ComEd's Plan will fulfill each of the requirements set forth under these several subparts. These minimum requirements do not prohibit the Commission from imposing additional requirements on the utility during implementation or as part of the plan approval process. Indeed, the Commission has done so in all previous EE plan filing dockets.

First, the Plan demonstrates that the modified energy efficiency and demand response measures required under 8-103(f)(1) will be achieved. (Staff Ex. 1.0, 16.) The Company requests the statutory goals set forth in Section 8-103(b) be modified as allowed under 8-103(f)(1). (ComEd Ex. 1.0, 4-5, 16.) Staff supports this request in concept. NRDC makes a number of recommendations concerning adjustments to budgets in Education, Research and Development ("R&D"), and Labor Costs such that ComEd's proposed modified savings goal can be increased. (NRDC Ex. 1.0, 14-17.) Staff is convinced by the arguments made by NRDC that ComEd's initial budgeted dollars for these activities are unreasonably high. (Staff Ex. 3.0, 32.) The Commission should adopt NRDC's proposals and require ComEd to file a Revised Plan incorporating these adjustments which would increase ComEd's three-year savings goals by 75,000 MWh. (Staff Ex. 3.0, 32-33.)

Second, the Plan presents specific proposals to implement new building and appliance standards in accordance with Section 8-103(f)(2). (Staff Ex. 1.0, 17.) Third, ComEd's Plan conforms with Section 8-103(f)(3), in that it presents estimates of the total amount paid for electric service expressed on a per kilowatt-hour ("kWh") basis associated with the proposed portfolio of measures designed to meet ComEd's proposed modified goals under Section 8-103(f)(1). Id. Fourth, the Plan demonstrates that ComEd has coordinated with the Department of Commerce and Economic Opportunity ("DCEO") to present an energy efficiency portfolio proportionate to the share of total annual utility revenues in its territory at or below 150% of the poverty level and targeted to households with incomes at or below 80% of area median income. Id. at 18. As required by Section 8-103(f)(5), the Plan demonstrates that its overall portfolio of EE and demand-response measures, not including those covered by the DCEO portfolio, are cost-effective using the TRC test and represent a diverse cross-section of opportunities for customers of all rate classes to participate in the programs. Id. ComEd's Plan further includes a proposed cost-recovery tariff mechanism to fund the proposed EE and demand-response measures to ensure the recovery of prudently and reasonably incurred costs of the programs in accordance with Section 8-103(f)(6). Id. at 24. Lastly, the Plan provides for an annual independent evaluation of the performance of the cost-effectiveness of the utility's portfolio of measures as well as a full review of the three-year results of the broader net program impacts, in accordance with Section 8-103(f)(7).

Additionally, Section 8-103(g) of the Act requires that no more than 3% of the EE and demand-response program revenue may be allocated for "demonstration of breakthrough equipment and devices." 220 ILCS 5/8-103(g). Staff's recommendation regarding this portion of the Act and ComEd's fulfillment of this requirement is set forth in detail below.

Finally, Section 8-103A of the Act requires that the Company's Plan include an energy efficiency analysis. The Company's potential study provided in ComEd Ex. 1.0 Appendix D satisfies this minimum requirement. (Staff Ex. 1.0, 27.) Staff's recommendation regarding future potential studies is set forth in detail later in this Initial Brief.

IV. NET-TO-GROSS RATIO VALUES

A net-to-gross ("NTG") ratio equals 1 – the free ridership rate + the spillover rate. If the free ridership rate is estimated as 20% and spillover is estimated as 10%, then the NTG ratio is 0.9 [(1 - 0.2 + 0.1) = 0.9]. (Staff Ex. 2.0, 3.) The value of the NTG ratio indicates what percentage of gross savings is attributable to actions of the program. In this example, it indicates that 90% of gross savings occurred as a result of program activities. Net savings is calculated by multiplying gross savings by the NTG ratio. If gross savings for a program are calculated as 1,000 kWh and the NTG ratio is calculated as 0.9, then net savings is 900 kWh (=1000 X 0.9 = 900 kWh). (Staff Ex. 2.0, 3.)

A free rider is someone who uses EE program funds to take actions that he or she would have taken anyway, even if no EE program funds were offered. (Staff Ex. 2.0, 2.) The significance of a free rider is that since this customer would have installed the measure anyway, there is no incremental savings to attribute to an EE program. Section 8-103(b) of the Act require the achievement of "incremental" energy savings goals. There are no incremental benefits associated with free riders, but there are costs associated with administration of EE programs. Programs designed to cater to free riders provide little benefit, redistribute wealth (often transferring payments from less affluent individuals to more affluent individuals) and take real resources away from society through program administration. (Staff Ex. 2.0, 14-15.) The non-participating ratepayers who pay for the EE project see their money given to other ratepayers who are taking actions free riders would take without the utility intervention. Id. The EE programs are intended to encourage ratepayers to adopt EE measures which they would not adopt without the existence of the program. Using a gross savings approach undermines the intent and purpose of the EE statutes.

Spillover represents savings due to customers who were motivated to install energy efficiency measures because of the existence of the utility's EE program, but the customers did not actually receive an EE program incentive or rebate for the EE measures for which spillover is claimed. Measuring spillover is by its definition an attempt to measure changes to behavior that took place outside of program channels because of the existence of the EE program. It is next to impossible to know what a utility customer with whom the EE programs had no direct contact did as a result of the utility EE program. (Staff Ex. 2.0, 4.) At least in measuring free riders, most utility programs have information on the customers who received the rebates or incentives from the programs, the efficiency level of the equipment or appliances purchased, and contact information such that those customers may be contacted for evaluation surveys. (Staff Ex. 2.0, 4.) This information can be used to attempt to ascertain what motivated the customers to use the utility EE program to purchase the energy efficiency measures. This does not imply that measuring free ridership is costless or easy; rather, information exists to know where to begin the investigation. (Staff Ex. 2.0, 5.)

From a policy perspective, achieving gross savings is not in the best interest of ratepayers because ratepayers pay for the EE programs and ratepayers only gain benefits from net savings, not from gross savings. (Staff Ex. 2.0, 12-13.) Gross savings are much easier to achieve than net savings. Id. By definition, programs with high rates of free ridership have a high level of gross savings that can be achieved even without the utilities offering EE programs. Id. With a gross savings goal, a utility has an incentive to devote resources to measures and programs with high free ridership. First, to the extent savings are the result of free riders, utility revenues and profits are not eroded by energy efficiency. Second, it takes less effort to encourage customers to take the rebate if most of those customers were going to do the project anyway. This is essentially the path of least resistance.

Pursuant to Section 8-103 of the Act, ComEd is required to meet incremental energy savings targets. Failure to meet the incremental energy savings goals may result in ComEd making contributions to LIHEAP and potential loss of the EE portfolio administration responsibility. 220 ILCS 5/8-103(i). Thus, ComEd has an incentive to meet goals within the constraints the Commission adopts in this proceeding in order to avoid such consequences. This incentive is important to keep in mind throughout the discussion of policy issues below.

A. Measurement of Free-Ridership and Spillover Factors for NTGRs

The Commission should reject ComEd's proposal to exclude free ridership whenever spillover is excluded.
Instead, the Commission should direct ComEd to require the independent Evaluators to make reasonable efforts to calculate both free ridership rates and spillover rates while being mindful of: (1) the costs of such evaluations, (2) the likely magnitudes of spillover and free ridership rates within a program, and (3) the significance of the program to the overall portfolio savings.
The Commission should direct ComEd to require its Evaluators work with interested parties to study the feasibility of performing an annual, biannual, or even triennial non-participant spillover assessment across the portfolio, and if practical, at least one should be conducted over the course of Plan 3.

ComEd proposes that all program evaluations must address, in addition to free ridership, spillover from both the participant and non-participant perspectives. Without these perspectives, the evaluation is unduly reducing the net program impacts that should be realized by a program. If an evaluation does not account for spillover, then the free rider effect should also be ignored. (ComEd Ex. 1.0, 110-111.) In rebuttal testimony, ComEd witness Michael Brandt clarified that ComEd's intent is not to have free ridership ignored if spillover is not included, but to ensure that spillover is considered in all cases. (ComEd Ex 3.0, 72.) No alternative proposal was provided with Mr. Brandt's clarification. Staff recommends that the proposal as presented be rejected.

Staff has no objection to the consideration of spillover. Non-participant spillover can be theoretically insignificant, empirically insignificant, and/or difficult and costly to measure. Staff recommends that the Commission "direct the independent evaluators to make reasonable efforts to calculate both free ridership rates and spillover rates while being mindful of: (1) the costs of such evaluations, (2) the likely magnitudes of spillover and free ridership rates within a program, and (3) the significance of the program to the overall portfolio savings." (Staff Ex 2.0, 4.) The Staff approach considers spillover although it may not always be included in estimates.

Although the Staff proposal may not lead to the inclusion of spillover in some cases, those cases would be at the discretion of the evaluators, such as: cases where the evaluators felt that it would be too costly, the savings were not likely to materially affect the portfolio, or there wasn't likely to be much spillover from the programs.

CUB, AG and NRDC also agree that it is reasonable to consider spillover. NRDC witness Chris Neme argues that spillover does not need to be considered in every study but that "every NTG factor must reflect expected free ridership and spillover effects." (NRDC Ex. 1.0, 27.) Mr. Neme states in rebuttal testimony that "[i]f a local study of spillover effects is not available, evaluators can recommend one from another jurisdiction or – if necessary – based on their own professional judgment, informed by expertise and experience from SAG stakeholders." (NRDC Ex. 2.0, 19.)

The application of spillover effects from other jurisdictions is problematic. Among the problems is that a utility has an incentive to find as high a spillover estimate as possible as it increases the calculated savings. In order to verify that the interests of ratepayers are considered, parties would be burdened to survey and verify all potential estimates of spillover from the other jurisdictions to determine whether the methodologies are applicable to the programs in Illinois. Among the reasons a methodology may not be applicable are that the program being evaluated measured multi-year spillover (Illinois has annual goals) or that the value was deemed as part of a negotiation process where the nature of the negotiations are unknown. (Staff Ex. 4.0, 6.)

Staff further argued that an alternative approach that considers spillover without requiring the inclusion of factors that are determined from external sources is to conduct a spillover survey across a utility territory either annually or once per three-year plan period. Id. at 8. Advantages would be that such a survey is less costly than attempting to measure spillover program-by-program and that it may more accurately reflect how spillover occurs than by attempting to attribute spillover to a particular program or measure. Id. at 7.

At the time of rebuttal testimony, Staff witness Brightwell was not aware of any such studies. Staff has since learned of such a study conducted by the Cadmus Group in Washington. ComEd indicated that it found a similar study was conducted in Connecticut. (ComEd Ex. 3.0, 72.) Mr. Brandt was intrigued by the Staff proposal to evaluate spillover at the portfolio level and believes it should be taken to the SAG and evaluators for further development. Id. Staff acknowledges that the working details of its proposal are incomplete and has no objections to taking the proposal to the SAG and evaluators for further development.

Although Staff supports the inclusion of spillover, it continues to recommend that the Commission reject ComEd's initial proposal to exclude free ridership whenever spillover is not included. Staff accordingly recommends that the Commission direct evaluators to consider spillover while being mindful of the costs to measure spillover and likely impacts of such measurements. Additionally, the Commission should direct ComEd to require its Evaluators work with interested parties to study the feasibility of performing an annual, biannual, or even triennial non-participant spillover assessment across the portfolio, and if practical, at least one should be conducted over the course of Plan 3. (Staff Ex. 4.0, 8.) If the Commission adopts ComEd's proposal, Staff would urge the Commission to require consistent IL-NTG methodologies for measuring free ridership and spillover as discussed in the next section of this Initial Brief.

V. STATEWIDE IL-NTG METHODS

In order to help ensure the independence of the Evaluators and to improve efficiency in the evaluation process, the Commission should require consistent statewide NTG methodologies be used in the evaluations of comparable programs offered by different Illinois program administrators. The Commission should direct ComEd to require its Evaluators to collaborate with the other Illinois Evaluators to reach consensus on the best and most defensible well-vetted approaches to assessing NTG in particular markets for both residential and non-residential EE programs in a manner consistent with the direction provided herein.

The Commission should direct ICC Staff to file the agreed-upon consensus statewide NTG methodologies with the Commission as an appendix to the Updated IL-TRM. In the unlikely event consensus is not reached on a certain component of the statewide NTG methodologies, that particular non-consensus component should be submitted in a manner consistent with the approach used for non-consensus IL-TRM Updates. It is efficient, transparent, and reasonable *to keep the Commission-adopted gross savings methodologies (IL-TRM) and net savings methodologies (IL-NTG Methods) together.*

A. Policy Manual

As described in Staff's rebuttal testimony, Staff originally opposed the AG's proposal to create an EE Policy Manual "designed to streamline and encourage consistency on various program-related policies for review and approval by the Commission." (AG Ex. 1.0C, 45 (emphasis added); Staff Ex. 3.0, 26.) Staff recommended that the Commission should decline to adopt the AG's proposal in this regard for each or all of the following reasons: (1) the phrase "various program-related policies" is sufficiently vague as to have potential for significant contention, (2) Section 8-103(f) requires the EE programs to be tailored to each utility's service territory, (3) each utility's plan filing docket provides sufficient guidance concerning how the utility should implement the EE programs in its service territory, (4) the creation of new program-related policies mid-Plan may serve to complicate and frustrate the utilities' existing EE program offerings to consumers, and (5) limited SAG resources should focus on its existing duties the Commission specified for SAG such as those related to the IL-TRM and NTGRs and reviewing utility quarterly reports and utility program changes. (Staff Ex. 3.0, 26-29.) ComEd concurred with Staff's position in this regard in rebuttal testimony. (ComEd Ex. 3.0, 68.)

In its Initial Briefs ("IBs") filed in the other Section 8-103 program administrators' EE plan filing dockets, the AG clarified that the EE Policy Manual that was proposed by the AG would address "evaluation-related" policies to ensure the EE programs are "evaluated" using a consistent set of "rules in terms of monitoring savings achieved and evaluating programs." (AG IB, 51, ICC Docket No. 13-0499; AG IB, 46, ICC Docket No. 13-0498.) Specifically the AG states:

> The goal of the establishment of a Policy Manual would be to ensure that evaluators and program administrators … for the various utility service territories and customer bases play by the same rules in terms of monitoring savings achieved and evaluating programs. Currently, the utility and DCEO Program Administrators and their individually selected evaluators at times play by different rules, as acknowledged by Ms. Hinman. For these reasons, the People urge the Commission to include within its Order in this docket specific direction for the SAG to complete an Illinois Energy Efficiency Policy Manual to ensure that programs across the state and as delivered by various program administrators can be meaningfully and consistently evaluated.

(AG IB, 46, ICC Docket No. 13-0498.)

With that clarification, Staff supports the AG's proposal in concept as it relates to evaluation issues, and <u>not</u> policies concerning prudence and EE <u>program</u> implementation. Indeed, in direct testimony, on the basis of helping to ensure the independence of the Evaluators and to improve efficiency in the evaluation process, Staff recommends the Commission require consistent statewide NTG methodologies ("IL-NTG Methods") be used in the evaluations of comparable EE programs offered by different Illinois program administrators. (Staff Ex. 1.0, 24-25.) ComEd did not object to such requirement in rebuttal testimony, and in fact recommended that Staff's proposal concerning a statewide assessment for spillover "should be taken to the SAG and the independent evaluator for further review and discussion." (ComEd Ex. 3.0, 72; Staff Ex. 1.0, 24-25; Staff Ex. 1.3, 67.) With respect to creating standard protocols for evaluating NTG in Illinois, ComEd states that "[b]ecause the independent evaluator has presided over the measurement of free-ridership and spillover since Plan Year 1 consistent with Section 8-103 of the Public Utilities Act, ComEd believes that the evaluator should be a party to any discussions concerning new protocols for such measurement. ComEd would be open to participating in such discussions with Staff and the evaluator." (Staff Ex. 1.3, 67.) Staff agrees with ComEd and believes the current Section 8-103 EE program Evaluators should take the lead in compiling and formalizing standard protocols for NTG in Illinois. Given the existing Plan 2 Evaluators are under contract with the utilities for the evaluation of the PY6 EE programs, which have not yet started, it would be appropriate for these existing Evaluators to work on the IL-NTG Methods over the next year.

The reasons Staff opposed the creation of a Policy Manual concerning "various program-related policies" are not applicable to the creation of a Policy Manual concerning "various evaluation-related policies." Staff interpreted "various program-related policies" as impacting the utilities' implementation of its EE programs and thus could impact customers. (Staff Ex. 3.0, 28.) Evaluation-related policies for each program will simply impact the Evaluators and will not significantly impact the utilities' administration and operation of the EE programs in the utilities' service territories. Thus, the establishment of evaluation-related policies will not impact, complicate, or frustrate the utilities' existing EE program offerings to consumers. Indeed, ComEd seems to agree that the Evaluators are the main ones impacted with respect to NTG policies when ComEd witness Brandt states that "only the independent evaluators will implement the [NTG] framework[,]" and he does "not believe … NTG … impact[s] any other parties[.]" (ComEd Ex. 3.0, 67.)

Staff noted that SAG should focus on its existing responsibilities the Commission previously directed SAG to undertake. (Staff Ex. 3.0, 29.) The AG's recommendation concerning consistency in evaluation-related policies is consistent with the existing responsibilities the Commission previously directed SAG to undertake. (AG Cross Ex. 3, 3.) The Commission has previously established that SAG's responsibilities include monitoring savings achieved and evaluations. ICC Order Docket No. 10-0564 at 92 (May 24, 2011). In the last Plan filings, the Commission stated that "[t]he SAG's responsibilities should include establishing agreed-upon performance metrics for measuring portfolio and program performance." Id. at 76. The Commission recommended that "the independent evaluator … work with the … SAG to … ensure transparent and consistent methods for determining electricity and natural gas savings." Id. The Commission emphasized that "[i]t is critical that both gas and electric utilities are required to play by the same rules and assumptions." Id. In ComEd's Plan 1 Order, the Commission established the SAG and clearly stated its responsibilities:

> The Stakeholder group's responsibilities include, but are not limited to: reviewing final program designs; establishing agreed-upon performance metrics for measuring portfolio and program performance; reviewing Plan progress against metrics and against statutory goals; reviewing program additions or discontinuations; reviewing new proposed programs for the next program cycle; and reviewing program budget shifts between programs where the change is more than 20%.

ICC Order Docket No. 07-0540 at 32 (Feb. 6, 2008) (emphasis added). Nonetheless, it is clear that different NTG approaches continue to be used for common programs offered by different program administrators, and thus a Commission directive to ComEd to require this task be completed is necessary. (Staff Ex. 1.0, 25; AG Cross Ex. 3, 3.)

While Staff opposes the SAG undertaking the development of an undefined Policy Manual concerning "program-related" policies and prudence determinations, Staff supports the development of consistent IL-NTG Methods as recommended in testimony. (Staff Ex. 1.0, 25; Staff Ex. 4.0, 8.) ComEd had no objection to Staff's recommendation.

(Staff Ex. 1.3, 67.) It would be valuable to have the Evaluators collaborate to reach consensus on the best approaches to assessing NTG in particular markets. (AG Cross Ex. 3, 3.) Contention over spillover estimation approaches will be reduced with Commission-approved methodologies in place. Costs to Evaluators and Staff will also decrease eliminating the distinct and sometimes duplicative NTG methodology discussions with each utility and its Evaluator. Staff believes consistent statewide NTG methods would be beneficial to the utilities just as the development of the IL-TRM has been beneficial: by providing greater consistency and certainty to utilities about likely future evaluation results, and a process to allow all interested parties (including utilities) to vet the reasonableness of the assumptions and algorithms impacting savings. (Staff Ex. 3.2, 8.) It is more efficient to vet NTG methodologies in a collaborative manner similar to the IL-TRM process, instead of separately and individually for each program administrator and Evaluator.

Given the inherent differences in the service territories of the utilities across Illinois as well as differences in the EE program guidelines, rebate amounts, and implementation approaches, in the event significantly different NTG results are found across comparable programs operated by different program administrators, the use of different NTG methods across program administrators provides limited useful information to parties concerning the source of such differences. Indeed, the memorandum containing the previously adopted NTG Framework expressed such concerns:

> The PY1 evaluated NTG ratios for Residential lighting are significantly different for Ameren and ComEd. While there are real differences in the demographics of their service territories that may have contributed to this difference, it is important to note that the utilities used different evaluation

> contractors and significantly different evaluation methodologies. As a result, there is little certainty about the attribution of these differences. We propose that wherever possible, joint and consistent statewide evaluations be performed. This will eliminate these uncertainties, allow for more direct comparison between [program administrators' ("PA's")] performance, as well as provide economies of scale and greater consistency and certainty to PAs about likely future evaluation results. We propose that standardized approaches to measuring freeridership and spillover be adopted in Illinois that ensure consistent measurement both across territories and over time. [fn]

(AG Cross Ex. 3, 6-7.)) The omitted footnote in the quoted text above states that "[a]n example of this exists in Massachusetts where all PAs have for roughly a decade used a standardized methodology and set of survey questions that were collaboratively developed to measure freeridership and spillover every year. This approach has proven to provide relatively stable results over time, and better elucidates differences between PAs that may result from different program approaches." Id. Besides Massachusetts, other states including California (AG Cross Ex. 3 (AG-Staff 1.04_Attachment)) have developed statewide standard NTG methods. (AG Cross Ex. 3 (AG-Staff 1.03_Attachment, 14).) The NTG methodology used to evaluate Ameren, ComEd, and DCEO non-residential EE programs during Plan 1, and Ameren, ComEd, MidAmerican Energy, Nicor Gas, North Shore Gas, and Peoples Gas during the last Plan, is mostly consistent with the California methodology, but the Illinois method includes additional consistency-check questions and an unlike-spillover question battery to assess participant spillover. (AG Cross Ex. 3 (AG-Staff 1.03_Attachment, 22); MidAmerican Rev. Ex. 2.2, 20, ICC Docket No. 12-0132.)

During Plan 1, the Evaluators collaborated to develop a consistent approach to estimating NTG for the non-residential EE programs. (AG Cross Ex. 3, 3.) However, alternative approaches are currently being discussed and implemented by the

Evaluators for the non-residential EE programs, primarily differences exist between DCEO and the utilities during Plan 2. (AG Cross Ex. 3, 3.) The Evaluators suggest that one of the options for moving forward is to "[s]ynchronize [NTG] analyses" for the Illinois program administrators. The Evaluators express an apparent willingness to compromise to reach consensus with each other on the best NTG methodology to implement by offering a list of potential changes that could be implemented to help synchronize the NTG methods across the Illinois non-residential EE programs. (AG Cross Ex. 3 (AG-Staff 1.03_Attachment, 20).)

Historically, there has not been consistency across utility portfolios with respect to estimation of residential program NTG ratios. This inconsistency has been subject to significant controversy, and creates concerns regarding the independence of certain Evaluators. (AG Cross Ex. 3, 2-3, 6-7.) Based on the concerns expressed regarding differences in the Residential Lighting Program NTGR values between ComEd and Ameren, the Commission directed the following for Plan 2: "The Commission also accepts Ameren's recommendation that Ameren, as well as ComEd, and the independent evaluators strive to understand differences in evaluation results and to reconcile differences not driven by differences in weather, market and customers." ICC Order Docket No. 10-0568 at 70 (Dec. 21, 2010). While consistency has occurred for many of the non-residential EE programs during Plan 1, the fact remains that alternative NTG approaches are currently being implemented during Plan 2. (Staff Ex. 1.0, 25; AG Cross Ex. 3, 3.) Accordingly, a Commission directive requiring the Evaluators collaborate to reach consensus on the best methods to assessing NTG in particular markets for both residential and non-residential EE programs is warranted. The

Commission should direct ComEd to require its Evaluators to collaborate with the other Illinois Evaluators to reach consensus on the best approaches to assessing NTG in particular markets for both residential and non-residential EE programs. (Staff Ex. 1.0, 25.) The best approaches will not be inflexible but would be able to be adaptable to multiple program designs and tailored to appropriately assess the specifics of each of the utilities' EE programs, consistent with standard NTG protocols adopted in other states. (AG Cross Ex. 3 (AG-Staff 1.03_Attachment, 34).)

It should be clear that Staff's recommendation is not to create entirely "new" NTG methods, but rather assess NTG methods that have been used to evaluate EE programs offered in Illinois and adopt the best and most defensible well-vetted method, or potentially combine certain components from the existing approaches to better represent the most defensible well-vetted method. (AG Cross Ex. 3 (AG-Staff 1.03_Attachment, 34).) To the extent the Commission adopts ComEd's recommendation to require participant and non-participant spillover be assessed for every EE program, there is potential that a new spillover method may need to be vetted in the event that particular spillover component has not been previously addressed in evaluations in Illinois. In addition, once light emitting diodes ("LEDs") represent a significant portion of ComEd's Residential Lighting Program, a new NTG question battery will need to be developed to assess NTG ratios for LEDs. (AG Cross Ex. 3, 2.)

The Commission should direct ICC Staff to file the agreed-upon consensus statewide IL-NTG Methods with the Commission as an appendix to the Updated IL-TRM. The IL-TRM currently envisions having NTG-related information in the appendices of the IL-TRM. (ComEd Ex. 1.0 Appendix C, 11.) It is logical to have the

Commission-adopted net savings (i.e., NTG) methodologies attached as an appendix to the Commission-adopted IL-TRM that contains the approved gross savings methodologies. It is efficient, transparent, and reasonable to keep the Commission-approved gross savings methodologies and net savings methodologies together.

The Evaluators in Illinois, through the SAG's TAC, have currently been working on understanding and reconciling differences in NTG methods for non-residential EE programs, so finalizing a consistent IL-NTG Method for the non-residential EE programs should be able to be completed before the filing of the Updated IL-TRM. (AG Cross Ex. 3 (AG-Staff 1.03_Attachment).) In the unlikely event consensus is not reached on a certain component of the statewide IL-NTG Methods, that particular non-consensus component should be submitted to the Commission in a manner consistent with the approach used for non-consensus IL-TRM Updates. (Staff Ex. 3.2, 8.) Procedurally, it is reasonable to keep the gross savings methodologies and net savings methodologies together, including the resolution of disputes.

The Commission should direct ComEd to require its Evaluators to collaborate with the other Illinois Evaluators to reach consensus on the best and most defensible well-vetted approaches to assessing NTG in particular markets for both residential and non-residential EE programs in a manner consistent with the direction provided herein. (Staff Ex. 1.0, 25.)

VI. MODIFIED ILLINOIS NET-TO-GROSS FRAMEWORK

The Commission should order the Company to use Staff's proposed Modified Illinois NTG Framework (Staff Exhibit 1.1) and reject the AG's, ComEd's, ELPC's, and NRDC's proposed modifications to the NTG Framework. The Commission should adopt in its entirety the Modified Illinois NTG Framework set forth in Staff Exhibit 1.1.

A. BACKGROUND

Under Plan 1, the Commission explicitly rejected deeming net-to-gross ratio ("NTGR") values for the utilities. ICC Order Docket No. 07-0540 at 44 (Feb. 6, 2008) ("Plan 1 Order") ("We conclude that ComEd's program should contain actual Net to Gross ratios. We, therefore, decline to 'deem' ComEd's Net to Gross ratios."). Thus, during Plan 1, all NTGR values were determined using actual data from ComEd customers from the applicable program year and were applied on a fully retroactive basis, meaning the NTGR ultimately applied would be that approved by the Commission in the compliance with energy savings goals proceeding which occurs after the program year has ended. In that proceeding, interested parties intervene and can provide input to the Commission on the NTGR value that should be used in evaluating whether ComEd complied with the savings goal. Further, in ComEd's Plan 1 Order, the Commission made it clear that the Evaluator is not the only competent party that could testify in such proceedings. Plan 1 Order at 27 ("The Commission reviews of ComEd's plan to determine compliance with the energy efficiency goals is separate and apart from the independent evaluation required by Section 103(f)(7) of the statute.").

In the 2010 EE dockets, the Commission approved a consistent NTG Framework for all utilities operating EE programs under Sections 8-103 and 8-104 of the Act. (Staff Ex. 1.0, 32; Staff Ex. 2.0, 15.) Among the reasons parties proposed the NTG Framework was that there is a lag between the time evaluations are completed and the end of a program year. (Staff Ex. 2.0, 14.) The result of the lag is that a utility will not know whether a program was effective at meeting its savings goal until six months or more into the next program year. Id. The NTG Framework adopted in ICC Docket No. 10-0570 was intended to provide greater certainty (though not 100%) to a utility by applying a prospective NTG ratio in a number of circumstances. (Staff Ex. 2.0, 15.) In Plan 2, the NTG Framework allowed for previous evaluation results to be used, retroactive application of NTGR values would occur in certain circumstances, and parties could submit differing positions on the NTGR value that should apply in the application of the NTG framework to the Commission. (Staff Ex. 1.0, 32.) Thus, under Plan 2, the Commission would consider interested parties' positions and make a decision concerning application of the NTG Framework.

In Docket No. 10-0570, the circumstances that were intended to warrant a retroactive NTGR application were if an EE program was new and no previous evaluation had been conducted or if the EE program had undergone a "significant change" in terms of market changes or changes to program design or delivery methods. (Staff Ex. 1.0, 32; Staff Ex. 2.0, 15.) The NTG Framework adopted in Docket No. 10-0570 was difficult to manage because it was unclear what constitutes a "significant change." (Staff Ex. 2.0, 16.)

B. OVERVIEW OF STAFF'S MODIFIED ILLINOIS NTG FRAMEWORK

The Commission should adopt in its entirety the Modified Illinois NTG Framework set forth in Staff Exhibit 1.1 as it resolves certain shortcomings, as discussed below, of the previously adopted NTG Framework while still providing the utilities with the incentives to prudently manage their EE programs in a manner that serves the public interest.

The NTG Framework approved by the Commission in 2010 largely allowed for prospective determination of NTGR values. (Staff Ex. 1.0, 32.) Some of the areas where the framework set forth retrospective application of NTGR values involved new EE programs, those lacking previously evaluated NTGR values, or when the EE program experienced "significant changes" in program design or delivery or market conditions. (Staff Ex. 2.0, 14.) This framework proved to be problematic because the meaning of "significant change" was sufficiently vague that no agreement of its meaning could be reached. In other words, the Plan 2 NTG Framework was difficult to manage because it was unclear what constitutes a "significant change" in order to trigger retroactive NTGR application. (Staff Ex. 2.0, 15.)

ComEd's NTG proposal in this proceeding fails to resolve the problem of "significant changes" and instead chooses to simply ignore it. (Staff Ex. 2.0, 17.) Staff's NTG proposal resolves the problem of "significant changes" by requiring that the basis of deeming a specific NTGR value shall be that it represents the best estimate of what the evaluated NTGR value would reasonably be expected to be taking into consideration the best information available about changes to the measure, program design, incentive levels, market, energy codes, and any other factors that could influence the level of free-ridership and spillover. (Staff Ex. 1.1, 1; Staff Ex. 2.0, 17.)

NRDC recommends introducing retroactive NTGR application to ComEd's proposal in the event of significant program design changes since NTGRs are influenced by program design. (NRDC Ex. 1.0, 23-25.) Staff's proposal allows for deeming a best estimate of a likely NTGR value going forward which takes into consideration NRDC's concerns and adjusts for changes to program design, whereas ComEd's proposal simply always uses at least a two year old evaluation of a different program design or market. Additionally, the ComEd approach relies on planning NTGR values for new EE programs which may have little justification. (Staff Ex. 2.0, 7.) Staff's proposal includes a provision that would provide more certainty to the utilities than a fully retroactive NTGR application like under the Plan 2 NTG Framework, while acknowledging that new EE programs and EE programs undergoing major changes are inherently risky to both the utilities and the ratepayers who are paying for the EE programs. (Staff Ex. 2.0, 18.) Staff's proposal removes the ambiguous phrase "significant changes" and instead of a "significant change" triggering a retroactive NTGR application, there will be a potentially partially retroactive NTGR application at times when the parties cannot reach consensus on the best estimate of the NTGR value to deem for the applicable program year. Id.

It is important for the deemed NTGR to represent the best estimate of the likely NTGR for the applicable program year in which it is deemed in order to provide ComEd with the proper incentives to manage its EE programs in a prudent manner which serves the public interest. Staff's proposal accomplishes this objective.

Under Staff's proposal, in times when a consensus cannot be reached, the NTGR applied and deemed for a specific program year (PY_t) would be the *average* of the evaluated NTGRs conducted in the previous two program years (PY_{t-1} and PY_{t-2}). (Staff Ex. 2.0, 19.) For example, if parties cannot reach a consensus on a NTGR value for the upcoming PY7 that begins on June 1, 2014, then the average of the evaluated

NTGR values from the PY5 and PY6 evaluation research findings would be applied. Id. Staff's proposal provides more certainty to the utilities than the current approach of a fully retroactive NTGR application for EE programs undergoing "significant changes" because the evaluated NTGR value from *at least* one of the two program years that will be averaged will be known at the time that planning for the applicable program year takes place. (Staff Ex. 2.0, 18.)

In general, Staff's preferred approach to determining the best estimates of savings achieved for a program year would be the Commission-adopted approach under Plan 1, wherein the deemed NTGR value for a program year (PY_t) would be the actual evaluated NTGR from that same program year (PY_t). However, that ideal approach provides the utilities with no certainty as they will not know whether they have met their goals in a given program year (PY_t) until at least two program years later when the evaluation results are available and the Commission makes a decision. For this reason, Staff offered a compromise proposal in Staff Exhibit 1.1 wherein the utilities could have the 100% certainty that they so desire by allowing for deeming the NTGR values for all programs wherein consensus is reached on the best estimate of the NTGR value to deem.

Since there is a degree of uncertainty in the case of non-consensus NTGR values under Staff's proposal, albeit significantly diminished in comparison to the NTG frameworks adopted for Plan 1 and Plan 2, the utility has an incentive to agree to a consensus deemed NTGR value reflective of the value likely to exist in the program year or to move funds away from a risky proposition and towards less risky propositions. (Staff Ex. 2.0, 19.) This provides benefits to ratepayers because the utility has an incentive to manage risky programs rather than to divert the risk to ratepayers. (Staff Ex. 2.0, 19-20.) Staff's proposal reduces uncertainty and risk to ComEd while simultaneously maintaining the need for ComEd to respond to uncertainty. (Staff Ex. 2.0, 19.)

Staff's process for resolving non-consensus NTGRs is preferable because it will likely result in better estimates of actual future NTGRs because the most recent evaluations will be incorporated and thus best reflect the current status of the program and market. (AG Ex. 1.0C, 35.) Since evaluation reports are not completed until about November of the following program year, there is a two-year lag between the time the NTGR values go into effect for prospective application under ComEd's proposal. (Staff Ex. 2.0, 15.) That is, the PY1 evaluations were not complete until midway through PY2 and would not apply for prospective application until PY3. Id. As a result, prospective application estimates savings based on conditions that are about two program years old at the time the NTGR values are being applied. Id. When the market is stable, this may be a reasonable approach. (Staff Ex. 2.0, 16.) When the market or program is changing, a NTGR value that is two program years out of date by the time it is applied is problematic because it requires utility ratepayers to bear all of the risks in times of uncertain market conditions. Id.

Under Staff's proposal, in such non-consensus cases, the basis for including the evaluated NTGR from two program years ago (PY_{t-2}) in the calculation of the deemed NTGR for the current program year (PY_t) is to provide ComEd some degree of certainty. Staff's approach is a reasonable compromise that significantly limits the risk to ComEd because one of the two NTGR values that would be averaged is already known (and in certain cases, for ComEd's large Residential Lighting Program, it may be possible for ComEd to know both NTGR values). (Staff Ex. 2.0, 18.) Staff's proposal significantly limits the risk to ComEd because one of the two values that would be averaged is already known, so even in the event of an adverse evaluated NTGR in the other program year (PY_{t-1}), the impact of such adverse evaluated NTGR (PY_{t-1}) is diluted because it is averaged with one already known NTGR value (PY_{t-2}). (AG Ex. 1.0C, 36.)

The AG claims that ComEd's proposal should be rejected because it automatically uses a NTGR value that is at least two program years old. This approach is too restrictive and may not result in the best estimates of future NTGR values. (AG Ex. 1.0C, 30.) Staff agrees that it is important for the deemed NTGR to represent the best estimate of the likely future NTGR for the program year in which it is deemed in order to provide ComEd with the proper incentives to manage its programs in a manner which serves the public interest.

ComEd argues that because there is not 100% consensus regarding every aspect associated with the NTG framework *policy* proposals in this docket, that this non-consensus *policy* issue implies/foreshadows that it will be unlikely for the parties to reach consensus on the actual NTGR *values* to deem. (ComEd Ex. 3.0, 3, 5-6.) ComEd's assertion in this regard should be rejected as it is inconsistent with ComEd's actual experience with deeming consensus *values*. For example, despite non-consensus regarding the IL-TRM *policy* in ICC Docket No. 13-0077, the actual IL-TRM itself (ComEd Ex. 1.0 Appendix C), which consists of literally five to six hundred pages of deemed algorithms and *values* for specific EE measure savings, has been the subject of consensus by all interested parties. As evidenced by the consensus nature of both the initial and updated versions of the IL-TRM the Commission adopted in ICC Docket Nos. 12-0528 and 13-0437, disagreement among parties regarding a specific *policy* (ICC Docket No. 13-0077) in a docket, provides no indication the parties will not reach consensus regarding the actual *values* to deem once that policy has been adopted and is implemented. The Commission should reject ComEd's simplistic argument that there will be non-consensus NTGRs *values* simply because there is non-consensus regarding the NTG *policy* in this proceeding.

If the Commission adopts Staff's recommendation to require consistent statewide NTG Methods, which is analogous to the Commission's policy requiring consistent gross savings methods set forth in the Commission-approved IL-TRM, then the Commission will have an opportunity to explicitly approve the net savings methodologies (i.e., IL-NTG Methods) used by the Evaluator. Thus, under Staff's NTG proposal, in the case of non-consensus, the methods upon which the deemed NTGRs (average of evaluated NTGRs) would be established would be based on such Commission-approved methodology that was previously vetted by all stakeholders instead of some "new" methodology that has no foundation and is subject to significant controversy which could result under ComEd's proposal. (AG Cross Exhibit 3.)

ComEd's proposal would result in excessive pressure on the Evaluators and create perverse incentives in terms of evaluation planning. (AG Ex. 1.0C, 31.) Staff's approach serves to avoid perverse incentives that discourage parties to work together in good faith to achieve consensus. (AG Ex. 1.0C, 36; Staff Ex. 1.0, 37.) If parties achieve consensus, then all NTGR values are certain. Under ComEd's proposal, the deemed NTGR value for the current program year (PY_t) would always be the evaluated

NTGR from at least two program years ago (PY_{t-2}). Under ComEd's proposal, if no new NTG study is performed, then ComEd knows with certainty that the existing NTGR value would remain deemed for use in future program years. Therefore, if ComEd perceives that the last evaluated NTGR value was higher than it expects it to be in the next program year, it will have a strong incentive to avoid performing any future NTG studies for that program. Id. ComEd's Retro-Commissioning Program provides a perfect example of this situation. (Staff Ex. 1.0, 23.) Further, there are no contractual provisions that require the Evaluator to take into consideration SAG recommendations when formulating the evaluation work plan to prevent such perverse result. Because ComEd's proposal only allows for modifications based on ComEd evaluated NTGRs that are at least two program years old, these perverse incentives created under ComEd's proposal are problematic and do not serve the public interest and should be rejected accordingly.

ComEd's proposal should be rejected because it effectively eliminates interested parties' rights to be heard. Under ComEd's proposed NTG framework in this proceeding, the Evaluator is the decision-maker rather than the Commission, and the Evaluator has no obligation to incorporate otherwise consensus positions in its NTG determination based on input from interested parties. (ComEd Ex. 1.0, 109-110.) This proposal is contrary to the Commission's previous two Plan Orders for ComEd which provided for input from all interested parties in determining the NTGR that would be used to assess compliance with the utility's savings goals. It is also contrary to the policies adopted by the Commission in ICC Docket No. 13-0077 which provide for modifications in the case of consensus. (Staff Ex. 3.2, 8-11.) Under Staff's proposal, any interested party can provide input, and only in the case of consensus is that NTG value deemed. In the case of non-consensus, two evaluated NTGRs are averaged, and if the Commission adopts Staff's other proposal requiring consistent statewide IL-NTG Methods be established and adopted by the Commission as discussed herein, then the two evaluated NTGRs that are averaged would be derived from the Commission-adopted NTG method that was vetted by all interested parties.

The independent Evaluators have expertise about all aspects of NTGR values and familiarity with ComEd's programs, thus having initial NTGR recommendations come from the independent Evaluators is efficient and appropriate as outlined in Staff's Modified NTG Framework. (Staff Ex. 1.1, 1.) In order to help ensure the independence of the Evaluators is not being compromised by pressure from the utility, who desires to have high NTGR values and holds the contract with the Evaluators, it is necessary to take the decision concerning the final deemed NTGR values away from the Evaluators. Staff's proposal provides for an opportunity for all interested parties to provide input, consistent with the NTG frameworks adopted during Plan 1 and Plan 2. Under Staff's Modified NTG Framework, there is value in the Evaluators estimating NTGR values using Commission-adopted methods because these estimated NTGR values can help inform future deemed NTGR values. It also provides parties with information concerning the impact of the EE program and can further help inform program design modifications. The Commission should adopt the Modified Illinois Net-To-Gross Framework (Staff Exhibit 1.1) in its entirety as recommended by Staff and set forth below.

C. MODIFIED ILLINOIS NET-TO-GROSS FRAMEWORK (STAFF EXHIBIT 1.1)

In order to provide the proper incentives to encourage a Utility to make appropriate program changes to ensure against high free-ridership in the following program year (PYt+1),[1] the basis of deeming[2] a specific net-to-gross ratio ("NTGR") value shall be that it represents the best estimate of what the evaluated NTGR value would reasonably be expected to be in the following program year (PYt+1) taking into consideration the best information available about the measure, program design, incentive levels, market, energy codes, and any other factors that could influence the level of free-ridership and spillover in the following program year (PYt+1). The following eleven steps set forth the Modified Illinois Net-To-Gross Framework.

(1) Each Evaluator shall submit to the Utility, ICC Staff, Illinois Energy Efficiency Stakeholder Advisory Group ("SAG") Facilitator, and/or the SAG a memorandum documenting the NTGR values, showing both free-ridership and spillover components, that it proposes to deem for the following program year (PYt+1) (hereinafter, "*Evaluator's Memo on Proposed NTGRs for PYt+1*"). The basis of the Evaluator's proposed NTGR values shall be its best estimate of what the evaluated NTGR would reasonably be expected to be in the following program year (PYt+1) based on the best information available about factors that could influence the level of free-ridership and spillover in the following program year (PYt+1).

a. Each *Evaluator's Memo on Proposed NTGRs for PYt+1* shall include the following information:

i. the scope of what each proposed NTGR value would be applicable to (e.g., specific measure technology, IL-TRM measure name and code, measure type, program element, program, fuel type savings);

ii. the previously evaluated NTGR values (including draft evaluation results when final evaluation results are not available), showing both free-ridership

[1] The nomenclature used in this document uses "t" to denote a time variable. PYt represents the current program year, PYt+1 reflects the next program year, and so on.

[2] Deeming of a NTGR value means that the Utility knows with certainty that the deemed NTGR value will ultimately be applied by the Commission in evaluating whether the Utility complied with the statutory savings goals set forth in Sections 8-103 and 8-104 of the Illinois Public Utilities Act ("Act").

and spillover components, along with NTGR methodology type, sample size, references, and other relevant information;

iii. the Evaluator's proposed NTGR values showing both free-ridership and spillover components; or if retroactive[3] application is preferred for the free-ridership and/or spillover components, then the proposed evaluation approach for estimating the NTGR component for PYt+1;

iv. the rationale for why the proposed NTGR value is the best estimate of what the evaluated NTGR would reasonably be expected to be in the following program year (PYt+1) after taking into consideration the best information available to the Evaluator from primary or secondary evaluation research about the measure, program design, incentive levels, market, energy codes, and any other factors that could influence the level of free-ridership and spillover in the following program year (PYt+1);

v. if evaluations from other jurisdictions are relied upon, relevance to the Illinois energy efficiency program in question shall be demonstrated and the NTGR methodology type, sample size, references, and other relevant information shall be provided;

vi. a table identifying the NTGR values proposed for deeming for PYt+1.

(2) Utilities host a teleconference meeting for SAG participants to discuss *Evaluator's Memo on Proposed NTGRs for PYt+1* (allows for questions from all parties, clarifications, discussion of rationale, raise concerns, etc.).

(3) All non-evaluator parties (jointly or individually) can submit *Party's Memo on Proposed NTGRs for PYt+1 – Response to Evaluator.*

(4) Utilities host a teleconference meeting for SAG participants to discuss NTGR values and *Party's Memo(s) on Proposed NTGRs for PYt+1 – Response to Evaluator* and attempt to reach consensus. Evaluators distribute detailed meeting notes no later than three days after the meeting.

(5) Evaluator's Revised Memo on Proposed NTGRs for PYt+1 incorporating consensus items and their proposed resolution for any non-consensus items.

---

[3] Retroactive application means that the Utility does not know with certainty the NTGR value that will ultimately be applied by the Commission in evaluating whether the Utility complied with the statutory savings goals. This uncertainty will persist until the Commission makes a decision in the Utility's compliance with energy savings goal docket.

(6) All non-evaluator parties (jointly or individually) may submit *Party's NTGR Objection Memo* clarifying any remaining non-consensus positions, if any. A *Party's NTGR Objection Memo* shall be submitted to the Utility, SAG Facilitator, ICC Staff, and/or the SAG that documents any objections to the proposed NTGR values contained in the *Evaluator's Revised Memo on Proposed NTGRs for PYt+1*. Failure of a party to submit a *Party's NTGR Objection Memo* by the deadline specified shall be construed as concurrence with deeming the NTGR values proposed in the *Evaluator's Revised Memo on Proposed NTGRs for PYt+1*. If no *Party's NTGR Objection Memo* is submitted on a particular proposed NTGR value by the deadline specified, then the Evaluator's proposed NTGR value contained in the *Evaluator's Revised Memo on Proposed NTGRs for PYt+1* is considered to be "consensus"[4] and shall be effectively deemed for the next program year (PYt+1).

(7) Utilities host a teleconference meeting(s) for SAG participants to discuss the *Evaluator's Revised Memo on Proposed NTGRs for PYt+1* and any *Party's NTGR Objection Memo(*s), and attempt to reach consensus. Evaluators distribute detailed meeting notes no later than three days after the meeting(s).

(8) <u>In cases where consensus is not reached</u> on an individual NTGR value by February 20 (i.e., a *Party's NTGR Objection Memo* is received regarding an individual NTGR value and is not resolved by February 20), the non-consensus individual NTGR value for the applicable program year (PYt+1) shall be deemed at the average of the evaluated NTGR values[5] from PYt and PYt-1.[6] In the event there is non-consensus on an individual NTGR value and there are no Illinois evaluations available, an explanation of the non-consensus issue may be filed with the Commission with a request for resolution prior to June 1.

(9) Evaluator's Memo on Deemed NTGRs for PYt+1 should reflect the final consensus NTGR values and non-consensus deemed NTGR formulas with NTGR values where available that are applicable to PYt+1.

(10) Utilities shall file in the initial TRM approval docket 12-0528 a list of the consensus NTGR values and non-consensus deemed NTGR formulas with NTGR values where available that are applicable to PYt+1 and supporting work papers (i.e., *Evaluator's Memo on Proposed NTGRs for PYt+1, Party's Memo(s) on Proposed NTGRs for PYt+1 – Response to Evaluator, Evaluator's Revised Memo on*

---

[4] Consensus means that no party indicates they oppose a specific NTGR value enough to contest it before the Commission.
[5] Evaluated NTGR values are NTGR values estimated by the evaluators using only data collected from the Utility's customers and contractors in the Utility's service territory.
[6] If only one evaluated NTGR value will be available, then that single evaluated NTGR value shall be deemed.

Proposed NTGRs for PYt+1, Evaluator's Memo on Deemed NTGRs for PYt+1). Supporting work papers help ensure compliance with the NTG Framework process. In the event that consensus is not reached on a new program NTGR value, then the respective Utility may file a petition requesting the Commission establish a deemed NTGR value. The filing will articulate the Evaluator's and the Utility's positions and rationale for deeming specific NTGR values. Failure of a Utility to file consensus and non-consensus deemed NTGR values with supporting work papers by March 5 (PYt) results in retroactive application[7] of NTGR values for that upcoming program year (PYt+1).

(11) While deemed NTGR values are not subject to retroactive adjustments based on new evaluation findings, the evaluation reports will show both deemed savings (based on deemed NTGRs for purposes of crediting Utility savings) as well the actual estimated NTGR value and net savings for that program year. While the deemed values will be the official claimed savings, and filed by each Utility in its respective compliance with energy savings goal docket, the information will provide straightforward and transparent data on the Evaluators' best estimates of net savings, as well as a comparison of how close the deemed NTGR values are to the final evaluation results.

Finally, Table 1 outlines the deadlines associated with the Modified Illinois Net-To-Gross Framework.

[7] Retroactive application means that the Utility does not know with certainty the NTGR value that will ultimately be applied by the Commission in evaluating whether the Utility complied with the statutory savings goals. This uncertainty will persist until the Commission makes a decision in the Utility's compliance with energy savings goal docket.

Table 1. Modified Illinois Net-To-Gross Framework Timeline

	Residential Programs	Non-Residential Programs
	On or before…	**On or before…**
(1) *Evaluator's Memo on Proposed NTGRs for PYt+1*	November 1	December 1
(2) Utilities host a teleconference meeting for SAG participants to discuss *Evaluator's Memo on Proposed NTGRs for PYt+1* (allows for questions from all parties, clarifications, discussion of rationale, raise concerns, etc.)	November 15	December 10
(3) All non-evaluator parties (jointly or individually) can submit *Party's Memo on Proposed NTGRs for PYt+1 – Response to Evaluator*	December 1	December 20
(4) Utilities host a teleconference meeting for SAG participants to discuss NTGR values and *Party's Memo(s) on Proposed NTGRs for PYt+1 – Response to Evaluator* and attempt to reach consensus. Evaluators distribute detailed meeting notes no later than three days after the meeting.	December 10	January 15
(5) *Evaluator's Revised Memo on Proposed NTGRs for PYt+1*, incorporating consensus items and their proposed resolution for any non-consensus items.	December 20	January 25
(6) All non-evaluator parties (jointly or individually) may submit *Party's NTGR Objection Memo* clarifying any remaining non-consensus positions, if any.	January 10	February 5
(7) Utilities host a teleconference meeting(s) for SAG participants to discuss the *Evaluator's Revised Memo on Proposed NTGRs for PYt+1* and any *Party's NTGR Objection Memo(s)*, and attempt to reach consensus. Evaluators distribute detailed meeting notes no later than three days after the meeting(s).	February 20	February 20
(8) In cases where consensus is not reached on an individual NTGR value by February 20 (i.e., a *Party's NTGR Objection Memo* is received regarding an individual NTGR value and is not resolved by February 20), the non-consensus individual NTGR value for the applicable program year (PYt+1) shall be deemed at the average of the evaluated NTGR values from PYt and PYt-1. In the event there is non-consensus on an individual NTGR value and there are no Illinois evaluations available, an explanation of the non-consensus issue may be filed with the Commission with a request for resolution prior to June 1.	February 20	February 20
(9) *Evaluator's Memo on Deemed NTGRs for PYt+1*	February 25	February 25
(10) Utilities shall file in the initial TRM approval docket 12-0528 a list of the consensus NTGR values and non-consensus deemed NTGR formulas with NTGR values where available that are applicable to PYt+1 and supporting work papers (e.g., *Evaluator's Memo on Deemed NTGRs for PYt+1*). In the event that consensus is not reached on a new program NTGR value, then the respective Utility may file a petition requesting the Commission establish a deemed NTGR value. The filing will articulate the Evaluator's and the Utility's positions and rationale for deeming specific NTGR values. Failure of a Utility to file consensus and non-consensus deemed NTGR values with supporting work papers by March 5 (PYt) results in retroactive application of NTGR values for the upcoming program year (PYt+1).	March 5	March 5

Note: All memorandums shall be submitted to the Utility, SAG Facilitator, ICC Staff, and/or the SAG.

D. DEEMED NTGR VALUES FOR PY7

The Commission should direct ComEd to work with the SAG to reach consensus on specific NTGR values to deem for program year 7 and include such NTGR values for program year 7 in the remodeling of ComEd's portfolio for its Revised Plan that it should file as a compliance filing in this docket.

Given the timeframe in Staff's Modified NTG Framework proposal has passed for the first program year of Plan 3, the Commission should direct ComEd to work with the SAG to reach consensus on specific NTGR values to deem for program year 7 and include such NTGR values for program year 7 in the remodeling of ComEd's portfolio for its Revised Plan that it should file as a compliance filing in this docket. The PY7 NTG discussion should initiate with a memorandum from ComEd's Evaluator containing its initial recommendations for deeming NTGR values for PY7; this approach is consistent with the first step in Staff's Modified Illinois NTG Framework. (Staff Ex. 3.0, 21-22.)

VII. REALIZATION RATE FRAMEWORK

The Commission should deny ComEd's request to adopt its Realization Rate Framework proposal because it attempts to circumvent existing Commission policies concerning evaluating savings that were established for <u>all</u> Illinois utilities operating EE programs pursuant to Sections 8-103 and 8-104 of the Act.

The Commission should deny ComEd's request to deem realization rates because ComEd does not face unmanageable risk and adoption of ComEd's proposed Realization Rate Framework would circumvent Commission policy established for <u>all</u> Section 8-103 and 8-104 EE program administrators. (Staff Ex. 1.0, 38-42; Staff Ex. 3.0, 21-23.)

ComEd's proposed Realization Rate Framework should be rejected because it attempts to circumvent Commission policy regarding estimating savings that was specifically established for all Section 8-103 and 8-104 EE program administrators. The Commission's Order states:

> The purpose of the TRM Policy Document is to provide transparency of and consistency in the applicability of TRM values so that all stakeholders have a common reference document for measure, program and portfolio savings. This common reference document enables meaningful cross-program comparisons, provides a consistent basis for savings calculations, and creates stability and certainty for Program Administrators as they make program design and implementation decisions. In addition, a common and transparent reference document for the use and applicability of the TRM may reduce costs to Program Administrators and stakeholders in preparing and reviewing energy efficiency Plan filings and reporting and reviewing energy savings as review of savings occurs in a single, coordinated process rather than separately and independently for each of the Illinois Program Administrators.

ICC Order Docket No. 13-0077 at 3 (March 27, 2013) (emphasis added). The Commission's Order on Rehearing states:

> This docket [ICC Docket No. 13-0077] is specifically designed to consider and approve TRM Policies that are intended to eliminate the inefficiencies of litigating these policies in each of the Utilities' separate three-year EE plan dockets and to provide certainty regarding the use and application of the TRM on an on-going basis.

ICC Order on Rehearing Docket No. 13-0077 at 3 (Oct. 2, 2013) (emphasis added).

As emphasized in the quotes above from the Commission's Orders in ICC Docket No. 13-0077, consistency across all of the Illinois utilities in the methods used to evaluate savings is an important policy objective. Further, the explicit purpose of establishing the gross savings policies in a single proceeding with all of the utilities was to avoid having to address these policies in each of the utilities' separate plan filing dockets (which ComEd is attempting to do in this case). ICC Order on Rehearing Docket No. 13-0077 at 3 (Oct. 2, 2013). Accordingly, the Commission should reject the Company's proposed Realization Rate Framework, as it fails to meet the Commission's objective to achieve consistency across the utilities. Furthermore, this docket is not the correct forum for such request.

Per the Commission-adopted IL-TRM Policy Document[8] (Staff Exhibit 3.2) in Docket No. 13-0077, as part of performing savings verification, the Evaluators apply and report realization rates in the evaluation reports for all utilities. (Staff Ex. 3.2 (IL-TRM Policy Document), 11-12.) The IL-TRM Policy Document specifies that these savings verification values shall be used to assess utility compliance with the statutory savings goals. (Staff Ex. 1.0, 40-42; Staff Ex. 3.2, 11.) The Commission's Order in Docket No. 13-0077 explicitly states:

> The Commission appreciates the collaborative efforts of the participants in producing the IL-TRM Policies, and agrees with the Parties that the IL-TRM Policies are consistent with the Commission's Orders and <u>will help ensure consistency in the evaluation and calculation of energy savings for Section 8-103 and 8-104 EE programs.</u>
>
> ….
>
> Pursuant to 220 ILCS 5/8-103 and 220 ILCS 5/8-104, the Utilities and DCEO are responsible for administering energy efficiency programs in the State of Illinois in order to achieve specified energy savings goals. The purpose of the IL-TRM is to provide a transparent and <u>consistent basis</u> for calculating energy (electric kilowatt-hours ("kWh") or natural gas therms) and capacity (electric kilowatts ("kW")) savings generated by the State of Illinois' energy efficiency programs, which are administered by the Program Administrators. In this Order, <u>the Commission directs that the independent evaluators perform savings verification</u> based on the Commission-approved TRM and present these savings verification values within the appropriate annual independent evaluation reports of the Program Administrators' energy efficiency portfolios completed pursuant to 220 ILCS 5/8-103(f)(7) and 220 ILCS 5/8-104(f)(8). <u>The Commission further directs these TRM savings verification values to be used where applicable for the purpose of measuring</u>

---

[8] Policy Division Staff Report dated December 18, 2012, Attachment A (Policy Document for the Illinois Statewide Technical Reference Manual for Energy Efficiency Final as of October 25, 2012), <u>Ameren Ill. Co., Commonwealth Edison Co., The Peoples Gas Light and Coke Co., North Shore Gas Co., and Northern Ill. Gas Co.: Adoption of Policies Concerning the Illinois Statewide Technical Reference Manual for Energy Efficiency</u>, ICC Docket No. 13-0077 (Oct. 25, 2012) ("IL-TRM Policy Document").

> savings toward compliance with Program Administrators' energy savings goals set forth in Sections 8-103 and 8-104 of the Illinois Public Utilities Act.

ICC Order Docket No. 13-0077 at 5 (March 27, 2013) (emphasis added). The IL-TRM Policy Document explicitly provides that measures not covered by the IL-TRM shall be subject to retroactive evaluation adjustments. (Staff Ex. 3.2, 11-12.) ComEd should not be authorized to deem realization rates for measures not in the IL-TRM and custom measures for which the policy for all program administrators in the State of Illinois is to have retroactive adjustments to savings based on evaluation findings. (Staff Ex. 1.0, 41.) Indeed, the Commission explicitly excluded the deeming of realization rates associated with custom engineering calculations in ComEd's last Plan filing. Plan 2 Order at 48-49. There is no compelling reason ComEd should not be held accountable for utility errors in its database, failure to accurately apply the Commission-adopted IL-TRM values, and other adjustments associated with performing savings verification. (Staff Ex. 1.0, 42.)

The basis for the Company's proposal to deem realization rates is its experience during Plan 1. (ComEd Ex. 1.0, 110.) During Plan 1, the Commission approved only a limited number of measures to have deemed savings assumptions. Having only a few deemed values was a contributing factor that caused low realization rates for certain programs in which ComEd's initial assumptions did not match the Evaluator's recommended assumptions during Plan 1. (Staff Ex. 1.0, 39.) One of the largest realization rate adjustments during Plan 1 related to the in-service rate (i.e., installation rate) for compact fluorescent lamps ("CFLs") in ComEd's Residential Lighting Program. (Staff Ex. 1.0, 39-40.) This in-service rate for CFLs was explicitly permitted to be deemed in the Plan 2 Order: "Components of realization rates over which ComEd has no control shall be deemed as part of the deemed measure savings (e.g., in-service rates for CFLs)." Plan 2 Order at 49. ComEd's risk experienced during Plan 1 was eliminated in PY4 by the Plan 2 Order deeming this component of realization rates, the in-service rate for CFLs. Plan 1 differs from Plan 3 in that there now exists an Illinois Statewide Technical Reference Manual for Energy Efficiency ("IL-TRM") (ComEd Ex. 1.0 Appendix C) that contains numerous deemed assumptions associated with calculating savings for prescriptive EE measures. ComEd's risk has been eliminated under Plan 3 by the Commission adopting the IL-TRM that explicitly deems the in-service rate for CFLs. (ComEd Ex. 1.0 Appendix C, 428.) Due to the in-service rate for CFLs being deemed in the IL-TRM, it is unnecessary for the Order in this proceeding to deem this factor. ComEd does not face unmanageable risk during Plan 3 due in large part to the creation of the IL-TRM, and the Commission should therefore reject ComEd's proposed Realization Rate Framework.

The Commission should reject ComEd's flawed argument that since the IL-TRM does not contain certain EE measures that ComEd plans to implement during Plan 3, such as an A-line LED replacement lamp measure, this is sufficient reason to deem realization rates. (ComEd Ex. 3.0, 74.) ComEd's reasoning contradicts Commission policy adopted for all program administrators in Illinois. The IL-TRM Policy Document clearly states that the utilities "are subject to retrospective evaluation risk (retroactive adjustments to savings based on evaluation findings) for any measures not included in the TRM, including custom measures, [and] prescriptive measures not yet incorporated into the TRM[.]" (Staff Ex. 3.2, 11.) Further, the IL-TRM Policy Document requires that the utilities "must submit these [new] measures [included in the utilities' Plan filings] to the TRM Update Process for possible inclusion in future TRM Updates as soon as practicable." (Staff Ex. 3.2, 11.) The Commission-adopted Policy Document also states that "[c]onsistent with Commission policy, the Program Administrators have the flexibility to add or retire measures from their programs unilaterally as markets, technology and evaluation results change. Therefore, Program Administrators are free to implement prescriptive measures that are not included in the TRM as long as such measures are submitted to the TRM Update Process as soon as practicable." (Staff Ex. 3.2, 9.) When prioritizing which measures will be included in the IL-TRM Update, the applicable principle is that the larger the forecasted participation and savings estimates for the new measure in the utilities' portfolio, the greater the chance the measure will be included in the Updated IL-TRM. In other words, high impact measures receive the most attention during the IL-TRM Update Process. (ComEd Ex. 1.0 Appendix C, 25-26.) Thus, under this principle, measures representing a relatively small percentage of the utilities' portfolio savings may not be incorporated into the Updated IL-TRM. There is little risk to the utility regarding retroactive adjustments to savings for measures representing a relatively small percentage of the utility's portfolio. Plus, the Company would have flexibility to size the new measure to limit its exposure to any perceived risk. Clearly, the Company does not face unmanageable realization rate risk for measures not yet incorporated in the IL-TRM considering the small participation estimates and associated savings for the measures relative to the entire portfolio. It should be noted that ComEd was able to effectively manage risk without any deeming of realization rates during Plan 1 and still able to far exceed its portion of the statutory savings goals. Now ComEd is asking for the relief of minimal risk associated with a likely small amount of savings for measures ComEd has not vetted through the established stakeholder process. Staff believes the Company is finding problems where none exist.

On the other hand, if ComEd's proposed Realization Rate Framework is adopted, the Company could game the system by excluding the measure from the IL-TRM Update Process and having the Company's estimates of savings deemed through realization rates with no transparency in how those savings were estimated or whether they are even reasonable. The IL-TRM Policy Document provides a framework for mid-year review of new measure savings at the request of the utility. In particular, if the measure does not yet exist in the IL-TRM, the Commission-adopted framework provides that:

> [T]he Program Administrator is free to use algorithms and/or input values that do not yet appear in the TRM <u>after discussing the new prescriptive measure with the TAC</u>. At least ten (10) business days prior to presenting this case to the TAC, the Program Administrator shall provide to the TAC the "Components of the TRM Measure Characterization" for the new measure, and work papers in the approved format, so that the TAC has adequate time to meaningfully review and comment on the new prescriptive measure. This documentation will also be used for the TRM Update Process. <u>The Program Administrator is at risk for retroactive evaluation adjustments to savings in this case. If consensus is reached regarding the components for the new measure characterization, then the TRM Administrator shall inform the Evaluators to also calculate savings using the agreed new measure characterization components, in addition to performing an evaluation of the new prescriptive measure. If such components are stipulated for acceptance by all the parties in the Program Administrator's savings docket, the Evaluator's savings calculations performed using the new measure characterization components may be used in measuring savings toward compliance with the Program Administrator's savings goals.</u>

(Staff Ex. 3.2, 10 (emphasis added).) Thus, in the event participation of a measure not included in the IL-TRM greatly exceeds expectations, there is a Commission-adopted framework in place whereby ComEd can submit the measure characterization and savings and supporting work papers to the TAC in an effort to obtain a degree of certainty on the savings estimates from stakeholders. Staff believes if the Company provides the required documentation set forth in the quote above and the measure savings are reasonable and based on legitimate evaluations, then the measure could easily be incorporated into the Updated IL-TRM. The reason outstanding measure requests exist is because the proposing party of a new measure or measure change does not provide the necessary work papers and measure characterization to enable the measure to be easily incorporated into the IL-TRM.

Finally, ComEd can mitigate any perceived risk by assuming conservative realization rates of less than one in its internal tracking system estimates of program savings achieved during the program year. (Staff Ex. 1.0, 42.) There is nothing prohibiting ComEd from using this internal risk management strategy. Indeed, ComEd used this risk management strategy during Plan 1, and oddly ComEd uses this increased savings and spending that results from such strategy as a justification for approving the Realization Rate Framework. (Staff Ex. 1.0, 42; ComEd Ex. 1.0, 110.) The Commission has previously stated that “[a]s the energy efficiency programs continue to evolve, the Commission hopes the Utilities will take steps to achieve the greatest amount of participation and energy savings possible using the most current information and resources at its disposal.” ICC Order on Rehearing Docket No. 13-0077 at 18 (Oct. 2, 2013). ComEd’s request to deem realization rates is inconsistent with the Commission’s directive quoted here as it can reduce savings and should be rejected accordingly.

For all the above reasons, the Commission should deny ComEd’s request to deem realization rates because ComEd does not face unmanageable risk and adoption of the realization rate framework would circumvent Commission policy established for all of the Section 8-103 and 8-104 EE program administrators. (Staff Ex. 1.0, 38-42; Staff Ex. 3.0, 21-23.)

VIII. IL-TRM MEASURE-LEVEL EVALUATION RESEARCH PRIORITY

The Commission should order ComEd to require its Evaluator in developing evaluation plans to consider IL-TRM measure-level evaluation research a high priority at least on par with the other evaluation priorities listed in ComEd's Plan.

Section 8-103(f)(7) of the Act requires an annual independent evaluation of ComEd's EE portfolio. 220 ILCS 5/8-103(f)(7). To aid in determining whether ComEd reaches its statutory savings goal for a given program year, the Commission adopted a policy whereby the independent Evaluators hired pursuant to Section 8-103(f)(7) are required to perform savings verification using the Commission-approved IL-TRM, which is updated annually based in part on "[i]mproved TRM input values developed through evaluations[.]" (Staff Ex. 3.2, 5.) The Commission Order adopting this policy states in relevant part:

> In this Order, <u>the Commission directs that the independent evaluators perform savings verification based on the Commission-approved TRM</u> and present these savings verification values within the appropriate annual independent evaluation reports of the Program Administrators' energy efficiency portfolios completed pursuant to 220 ILCS 5/8-103(f)(7) and 220 ILCS 5/8-104(f)(8). <u>The Commission further directs these TRM savings verification values to be used where applicable for the purpose of measuring savings toward compliance with Program Administrators' energy savings goals</u> set forth in Sections 8-103 and 8-104 of the Illinois Public Utilities Act.

ICC Order Docket No. 13-0077 at 5 (March 27, 2013) (emphasis added). Because the measure-level savings estimates represented in the IL-TRM are used by the Commission to help determine whether ComEd meets its statutory savings goals under

Section 8-103, it is critical that the IL-TRM contains the best available most defensible information.

NRDC states that "TRM assumptions are an important component of efficiency program savings estimates and, as a result, should be updated periodically – particularly for measures that generate substantial amounts of savings and/or for which there are reasons to believe that current assumptions may be out of date." (Staff Group Cross Ex. 2, 1.) Staff agrees with NRDC in this regard. Further, the Commission-adopted IL-TRM Policy Document explicitly states that "[b]ecause technology is constantly improving, and markets are constantly changing, a TRM must be a living document to keep pace with change. Otherwise, the TRM will quickly become obsolete and the savings estimates may be perceived to be less reliable." (Staff Ex. 3.2, 5.) Because the IL-TRM forms the basis for savings that can be claimed to meet the statutory savings goals, ComEd has a natural incentive to avoid having the Evaluators conduct measure-level evaluation research to update the IL-TRM for measures or measure subcomponents (e.g., hours of operation) in which ComEd believes there is potential for the measure-level savings to be reduced in the IL-TRM as a result of the evaluation. If reduced savings are discovered through IL-TRM measure-level evaluation research and those findings get incorporated into the Updated IL-TRM, it would make it more challenging for ComEd to achieve its savings goals on paper. Indeed, experience to date demonstrates ComEd requests that the Evaluator perform measure-level evaluation research (e.g., refrigerator metering study, CFL hours-of-use logger study) only when it is needed to satisfy PJM requirements. (ComEd Ex. 1.0 Appendix C, 327, 432.) Without a Commission directive to ComEd to require the

Evaluators to consider IL-TRM measure-level evaluation research when developing the evaluation plan, Staff is concerned ComEd's current approach and direction provided to the Evaluators will continue and the IL-TRM may become obsolete and the savings estimates unreliable.

NRDC states that "the relative importance of TRM assumption research – i.e. how it ranks relative to other priorities such as NTG research, process evaluation, program-level realization rate development and potentially other priorities – will vary from program to program and from time to time." (Staff Group Cross Ex. 2, 1.) Staff agrees with NRDC in this regard. Staff notes that ComEd does not even list IL-TRM measure-level evaluation research in the "Portfolio Evaluation" section of its filed Plan. (ComEd Ex. 1.0, 108-111.) Staff interprets this exclusion to mean ComEd will not direct its Evaluator to consider performing such IL-TRM measure-level evaluation research when developing the evaluation plan. While it is important to consider a variety of evaluation activities and prioritize them appropriately based on the needs of the EE portfolio within the 3% independent evaluation budget constraint, it should be noted that ComEd already commissions <u>numerous</u> process-related program evaluations and market research studies annually outside of the 3% independent evaluation limit. (ComEd Ex. 1.0, 92-93.) For example, during the discovery process in this proceeding, ComEd produced 36 documents consisting of 1,951 pages of evaluation and market research related studies that ComEd had commissioned in the past year or two, since PY4. (Staff Group Cross Ex. 1.) For example, Staff Group Cross Exhibit 1 contains two of those studies, "ComEd Appliance Recycling Evaluation" (Staff Group Cross Ex. 1, 2-52) and "ComEd Smart Ideas for Your Business: Key Driver Study" (Staff Group Cross

Ex. 1, 53-142). (Staff Group Cross Ex. 1, 1.) Staff believes the limited 3% independent evaluation funds should not be spent duplicating such efforts and rather it would be appropriate to focus these limited evaluation funds on impact evaluations, evaluating and verifying ComEd's savings, performing baseline studies, and measure-level evaluation research to improve the IL-TRM.

Staff does see benefit in having the Evaluators perform process evaluations, especially for the joint programs ComEd operates in conjunction with the gas utilities, and Staff understands there are important synergies in performing process and impact evaluations concurrently. But ComEd's existing program and market research evaluation activities and information should be taken into consideration when formulating where the limited 3% evaluation funds are directed. Further, to the extent ComEd's existing research would improve IL-TRM assumptions, ComEd should be required to provide it to the TAC, without regard for whether it would reduce savings or not. The Company should provide a list of the studies it is conducting and the main purpose of such studies in its reporting to the Commission.

Staff supports and recommends the Commission consider the Pennsylvania Public Utility Commission's ("PA PUC") analysis related to the importance of updating TRMs with the best available information. This analysis supports Staff's position that the Commission should direct that IL-TRM measure-level evaluation research should be considered a high priority for the independent Evaluator such that the IL-TRM does not become obsolete:

> The purpose of the [energy efficiency] Program is to implement measures to obtain real energy consumption and demand reductions in a cost-effective manner. The amount of the energy consumption and demand reductions measured by the [energy efficiency] Program must be credible in order to

> determine, not only if the [utilities] meet the mandatory targets, but to determine whether the ratepayers received real energy consumption and demand reductions and whether those reductions were obtained in a cost-effective manner. The Commission believes that these issues are the primary and proper reasons to use in assessing whether the TRM values should be updated.
>
> The Commission believes that the damage to the public's trust would be greater if the Commission and the [utilities'] were to promise greater energy savings than the public realizes when participating in and installing the measures promoted by the Commission and the [utilities]. This is especially true based on the fact that the customers participating in and installing these measures pay the lion's share of the purchase and installation costs for these measures. The trust and confidence of these customers could be irreparably lost if these customers realize far less energy savings than promised after investing significant personal or corporate capital in the offered programs and measures. Whereas, if an [utility] were to fail to meet the mandated energy consumption or demand savings, it is likely that the customers will lose confidence in the [utility's] ability to implement such a program, not the program as a whole, provided the savings realized were credibly predicted by the TRM.

PA PUC Order Docket No. M-00051865 at 48-49 (Feb. 28, 2011).

For all of the above reasons, the Commission should order ComEd to require its Evaluator in developing evaluation plans to consider IL-TRM measure-level evaluation research a high priority at least on par with the other evaluation priorities listed in ComEd's Plan.

IX. ALIGNMENT OF SCHEDULES FOR NTG AND IL-TRM UPDATES

The Commission should adopt the Evaluators' suggested EM&V schedules for IL-TRM and NTG updates as set forth in Staff Exhibit 1.2 and direct ComEd to incorporate such schedules into its contracts that should be submitted as a compliance filing in this docket.

The AG requests that the Commission direct ComEd to work with the SAG on "[i]mproving the evaluation, measurement and verification (EM&V) process so that [the Evaluators'] reports are produced in a timely fashion to inform [the Illinois Statewide

Technical Reference Manual ("IL-TRM" or "TRM")] and NTG updates[.]" (AG Ex. 1.0C, 44.) Staff agrees with this concept, and in fact Staff has been working to encourage the Evaluators to deliver EM&V reports concerning IL-TRM and NTG updates in a more timely fashion. (Staff Ex. 3.0, 25.) Accordingly, rather than the Commission directing ComEd to work with the SAG concerning this evaluation timing issue as requested by the AG, the Commission should resolve the matter in this docket and adopt the workable timelines suggested by the Evaluators for IL-TRM and NTG updates such that ComEd can have those incorporated into its evaluation contracts after approval of the Plan. (Staff Ex. 3.0, 26; Staff Ex. 1.2, 1.)

One of the apparent drivers of the date the NTG results are produced is the date the Evaluators finally receive the final EE program tracking system information from the utilities after the program year has ended. (Staff Ex. 3.0, 26; Staff Ex. 3.1, 1-2.) Since the finalization of the tracking system for the non-residential programs apparently takes longer than for residential programs, producing the NTG results for the non-residential programs also takes longer, namely December 1 for non-residential programs and November 1 for residential programs. This is why Staff believes a two-track approach for the NTG updates is appropriate. (Staff Ex. 1.0, 34; Staff Ex. 3.0, 26; Staff Ex. 3.1, 1-2.) Indeed, the AG supports such an approach. (AG Ex. 1.0C, 34.) Because final tracking system information is not needed for updating the IL-TRM, the Evaluators suggest that the annual IL-TRM Update Process can begin much earlier (i.e., July 1, with much of the work due from the Evaluators on August 1 and October 1) than the process for updating NTG ratios (November 1 for residential NTG ratios and December 1 for non-residential NTG ratios). (Staff Ex. 1.2, 1.)

Importantly, all of the utilities' Evaluators have worked together and recently produced a single set of suggested timelines that could work well in updating the deemed values for both the IL-TRM and NTG ratios on an annual basis for Illinois. (Staff Ex. 1.2, 1.) DCEO's Evaluator has also agreed to these timelines. (Staff Group Cross Ex. 2, 3, ICC Docket No. 13-0499.) Thus, for the sake of resolving the issue raised by the AG in this docket which would free up limited SAG resources for addressing unresolved matters that actually require SAG's attention, the Commission should adopt the Evaluators' suggested EM&V schedules for IL-TRM and NTG updates as set forth in Staff Exhibit 1.2.

X. POTENTIAL STUDY

The Commission should direct that future Potential Studies should analyze economically efficient potential.

The potential study presented by ComEd measures what it refers to as "economic potential." Economic potential, as used in the Potential Study, measures the amount of savings possible from using the most technologically efficient replacement equipment that has positive net benefits compared to a base level of equipment. (ComEd Ex. 1.0 Appendix D, i.) This definition of economic potential is equivalent to asking "What is the potential energy savings from replacing current equipment with the most energy efficient piece of equipment that provides net benefits to customers?" It does not answer the question "What is the potential energy savings if current equipment is replaced with the energy efficient equipment that maximizes net benefits to ratepayers?" The second question addresses the issue of which equipment efficiency would maximize the welfare of ratepayers by providing the economically efficient level of energy efficiency. The answer to this question is what economists typically consider to be economic efficiency.

Staff provided an explanation and an example of the calculation of economically efficient potential. (Staff Ex. 2.0, 20-23.) The benefit of measuring economically efficient potential is that it informs the Commission and interested stakeholders about the maximum energy savings possible for a given budget. (Id. at 23-24.)

ComEd indicated interest in the proposal but requested more time to study the merits (ComEd 3.0, 86). Staff would prefer a stronger commitment and recommends that the Commission order the inclusion of economically efficient potential in future Potential Studies.

XI. COST-EFFECTIVENESS, FLEXIBILITY, AND REPORTING

The Commission has previously established certain limits on requests for flexibility and should do so in this docket consistent with Staff's recommendations. For example, the Commission ordered the following limitations in the last Plan filings:

> The Commission agrees that allowing the Utilities some flexibility to adjust their portfolios and implementation plans is important. This is especially true for the first program period. The Utilities should follow the criteria established in Docket 10-0570[.] The Utilities should fully discuss with the SAG prior to initiating the change, any shift in the budget that results in a 20% or greater change to any program's budget, or that eliminates or adds a program. Further, [t]he Utilities shall not shift more than 10% of spending between residential and C&I sectors without Commission approval. The Utilities shall not modify their plans such that it no longer meets the statutory requirements for allocations to the low income and state and local government markets.

ICC Order Docket No. 10-0564 at 91-92 (May 24, 2011). While the Commission did not impose the exact same restrictions on ComEd's flexibility in terms of obtaining Commission approval in previous Plan filings, this Plan 3 filing is different from the previous two Plan filings because ComEd is not planning to meet the unmodified statutory energy savings targets in <u>any</u> program year of Plan 3. Further, in the past two Plan filings, all measures and programs that ComEd proposed for inclusion in the Plan were considered cost-effective and screened to satisfy the TRC test. This is the first Plan filing wherein ComEd proposes modified savings targets for every program year of its portfolio and it proposes to promote numerous cost-ineffective measures. Thus, the Commission has before it several critical policy decisions to make in this docket.

A. FLEXIBILITY

The Commission should grant ComEd the flexibility to adjust its portfolio in order to increase net benefits for ratepayers.
ComEd should include a discussion of how it uses its flexibility in its reports submitted to the Commission.
The Commission should order the Company to provide all the information requested by Staff in its Reconciliation Reports it files with the Commission.
The Commission should order ComEd to describe how it utilized the flexibility it was granted in its reports to the Commission and in the testimony filed in ComEd's Rider EDA annual reconciliation proceeding. This information shall include how ComEd responds to past Evaluators' recommendations and changes in the IL-TRM and NTG ratios. To the extent such changes significantly impact the portfolio and expected cost-effectiveness, ComEd should also report a revised projected portfolio level TRC for the program year.

The Company requests the Commission grant ComEd flexibility in implementing its Plan. (ComEd Ex. 2.0, 4, 44, 57-60.) Specifically, ComEd witness Michael S. Brandt states:

> [T]o address risk going forward, ComEd also must retain flexibility to adjust portfolio and program design based on the real-time information it receives. ComEd requires the ability to modify programs during the three-year Plan cycle as results are realized. On-going program modifications are a key to a well-designed portfolio – as information is received and analyzed, program designs will be modified accordingly. This will be critical if the proposed energy savings goals are to be achieved. For example, it is possible that a measure may lose its cost-effectiveness over time or participation rates for a certain measure turn out lower than expected.

> Although we have conducted a risk analysis, it is impossible to foresee every contingency that might arise in the future. To ensure that ComEd has the ability to respond to such challenges following approval of Plan 3, it must retain sufficient flexibility to reallocate funds across program elements, including the ability to modify, discontinue and add program elements within approved programs based on subsequent market research and actual implementation experience.

(ComEd Ex. 2.0, 57-58.) Mr. Brandt provides for the following notification process for making changes to its programs after the Commission approves the Plan:

> Essential to ComEd's risk management strategy is retaining sufficient flexibility to reallocate funds across program elements, including the ability to modify, discontinue and add program elements within approved programs as dictated by additional market research and actual implementation experience. At the same time, we recognize the importance of having stakeholder participation in this process of review and, as necessary, modification. Consistent with the Commission's Orders in Docket Nos. 07-0540 and 10-0570, ComEd proposes that the following matters would be discussed within the SAG:
>
> • The reallocation of funds among program elements within the *Smart Ideas for Your Home* and *Smart Ideas for Your Business* programs (excluding those elements managed by DCEO) to ensure ComEd's ability to achieve its goals, where the change in budget for any specific program element is greater than 20%.
>
> • Discontinuing approved program elements within the *Smart Ideas for Your Home* and *Smart Ideas for Your Business* programs.
>
> • Adding new program elements within the *Smart Ideas for Your Home* and *Smart Ideas for Your Business* programs, as long as those program elements pass the TRC test. The proposed portfolio represents our best effort to design a cost-effective mix of program elements with a high probability of success. Following Commission approval of Plan 3, ComEd will proceed with final and detailed program designs and implementation plans. This process will include further discussions with stakeholders, customer groups and trade allies. Continuing market research will also influence ongoing program direction. Based on the information compiled through this process, these initial program designs most likely will be refined to strengthen the program offerings. In the event ComEd revises the proposed budget for any specific program element within the *Smart Ideas for Your Home* and *Smart Ideas for Your Business* programs by more than 20%, it will notify the SAG of these changes.

(ComEd Ex. 2.0, 58-59.) Staff supports the Company's request subject to the requirement that the Company report to the Commission how it uses its flexibility. ComEd objects to Staff's request on the basis of reporting to the Commission being a "significant administrative burden" and the reporting being largely "duplicative" of all the reporting and docketed proceedings to which ComEd is already subject to throughout a program year. (ComEd Ex. 3.0, 78.) The current reporting ComEd provides has been insufficient as it does not describe the information Staff requests ComEd to provide in this proceeding. The gas utilities subject to Section 8-104(f)(8) are required to submit quarterly reports to the Commission. ComEd administers the largest amount of ratepayer-funded energy efficiency programs in Illinois and ComEd produces the fewest number of reports to the Commission.

In the interest of minimizing contested issues in this case, Staff would be willing to compromise and rather than having ComEd file semi-annual reports with the Commission that includes the information Staff requests, the Commission should order the Company to provide all the information requested by Staff in its Reconciliation Reports it files with the Commission.

The Commission should order the Company to include the following information in its Reconciliation Reports:

ComEd should notify the Commission in writing of key changes it makes to its programs, regardless of whether the changes are less than 20%. This recommendation should not be construed as reporting "every" change, simply changes that ComEd believes would be relevant to demonstrating the Company is using its Commission-granted flexibility to prudently manage its programs. This recommendation should not be construed as needing to request approval from the Commission to make changes.

The Company should describe program activities, implementation modifications, spending and savings amounts compared to the Plan filing, and other relevant information concerning Plan 3. (Staff Ex. 1.0, 30.) After IL-TRM and NTG changes and receiving findings from evaluation and market research, the Company should describe the impact of the changes on its portfolio and how the Company to responds. The Company should also respond to each of the recommendations contained in the prior evaluation reports. ComEd currently tracks this information, thus Staff's recommendation only involves ComEd reporting information it already has in its possession to the Commission. (ComEd Ex. 1.0, 91.)

B. Reporting TRC for New Measures to the Commission

The Commission should require ComEd to provide cost-effectiveness screening results in its reports filed with the Commission in this docket for new measures the Company adds to its Plan during implementation. (Staff Ex. 1.0, 21.)

Staff recommended ComEd provide the TRC cost-effectiveness screening results for any new measures ComEd decides to add to its Plan during implementation. (Staff Ex. 1.0, 21.)

"Cost-effective" as used in Section 8-103(b) and (c) means "measures [that] satisfy the total resource cost ("TRC") test." 220 ILCS 5/8-103(a). The IPA Act provides the definition for the TRC test:

> "Total resource cost test" or "TRC test" means a standard that is met if, for an investment in energy efficiency or demand-response measures, the benefit-cost ratio is greater than one. The benefit-cost ratio is the ratio of the net present value of the total benefits of the program to the net present value of the total costs as calculated over the lifetime of the measures. A total

> resource cost test compares the sum of avoided electric utility costs, representing the benefits that accrue to the system and the participant in the delivery of those efficiency measures, as well as other quantifiable societal benefits, including avoided natural gas utility costs, to the sum of all incremental costs of end-use measures that are implemented due to the program (including both utility and participant contributions), plus costs to administer, deliver, and evaluate each demand-side program, to quantify the net savings obtained by substituting the demand-side program for supply resources. In calculating avoided costs of power and energy that an electric utility would otherwise have had to acquire, reasonable estimates shall be included of financial costs likely to be imposed by future regulations and legislation on emissions of greenhouse gases.

20 ILCS 3855/1-10.

ComEd included some measures that do not pass the TRC test in its Plan, but all proposed programs pass the TRC test, once the costs and benefits of the gas component of certain joint programs are also considered, and the planned portfolio also passes the TRC test. (ComEd Ex. 1.0, 26; ComEd Ex. 1.0 Appendix A, 6-11; ComEd Ex. 2.0, 30-31, 33-42; ComEd's Resp. to Staff DR JLH 2.09 SUPP.) Including cost-ineffective measures within EE programs increases the risk that the entire portfolio may become cost-ineffective. (Staff Ex. 1.0, 20.) The addition of a cost-ineffective measure serves to reduce net benefits to ratepayers and this makes it more difficult for the policy objectives set forth in the EE statutes to be realized (i.e., direct and indirect costs to consumers shall be reduced through investment in cost-effective EE measures). (Staff Ex. 1.0, 20-21.) Even if the addition of cost-ineffective measures during the Plan implementation does not make the entire portfolio cost-ineffective, the implementation of cost-ineffective measures still serves to erode net benefits to ratepayers. Staff acknowledges that there may be certain extenuating circumstances in which it makes sense to offer a cost-ineffective measure, however, Staff believes the ComEd should make that case in this Plan filing and not simply add cost-ineffective measures to the Plan after Commission approval.

ComEd's request for flexibility includes the ability to add new measures to the Plan during implementation, yet ComEd declines to provide the cost-effectiveness screening results for such new measures in its reports filed with the Commission. The Commission should order ComEd to provide the TRC cost-effectiveness screening results for any new measures ComEd decides to add to its Plan during implementation. (Staff Ex. 1.0, 21.) This straightforward proposal is necessary in order to ensure the Commission is informed of the TRC results for measures that are not forecasted to be implemented during Plan 3. The Commission requires that a utility indicate the forecasted TRC of all measures and programs that are to be implemented under its proposed Plan. Logically, it follows that in exercising the flexibility the Commission grants to it, a utility should also apprise the Commission of the TRC values of measures that it implements in the future which are not indicated in this Plan filing. If ComEd is allowed to implement new measures without providing the Commission this information, the Commission's authority in approving the Plan may be undermined. Staff is surprised that ComEd's request for flexibility is accompanied by an unwillingness to provide the Commission with transparency and insight into its decision-making process. Id. Staff's recommendation that TRC values should be included for new measures is not any more burdensome upon the Company than the Commission's requirement that the TRC values be provided for review of the Plan filing. In light of the vast flexibility that the Company is requesting the Commission grant it, Staff's recommendation is certainly reasonable, and should be adopted.

C. LIMIT PARTICIPATION OF COST-INEFFECTIVE MEASURES

The Commission should order ComEd to limit the participation of cost-ineffective measures to no more than the levels proposed in its Plan, with the caveat that if a measure is cost-effective in the vast majority of building types to which it is directed and marketed to, ComEd need not attempt to limit participation of the measure within a program year, and cost-ineffective measures that are a necessary component for implementing cost-effective measures (e.g., comprehensive whole home dual fuel programs) are excluded from such limitation. In order to ensure the Plan produces the net benefits to ratepayers envisioned by the EE statutes, the Commission should order ComEd should stay apprised of and respond prudently and reasonably to information concerning measure and program level cost-effectiveness during the course of implementing its portfolio to help ensure net benefits are maximized for Illinois ratepayers.

Staff argued that the Commission should in granting ComEd's request for flexibility, also direct ComEd to avoid over-promoting cost-ineffective measures so as to help ensure participation of cost-ineffective measures does not exceed expectations in ComEd's Plan. (Staff Ex. 1.0, 22-23.) ComEd should be required to obtain Commission approval before exceeding the participation estimates for cost-ineffective measures. This is consistent with limitations on flexibility in past Commission Orders wherein the Commission required the utility (Integrys) to obtain Commission approval before shifting funds greater than specified percentages. *See, e.g.,* ICC Order Docket No. 10-0564 at 91-92 (May 24, 2011). While the Commission did not impose the exact same restrictions on ComEd's flexibility in terms of obtaining Commission approval in previous Plan filings, this Plan 3 filing is different from the previous two Plan filings because ComEd is not planning to meet the unmodified statutory energy savings targets in <u>any</u> program year of Plan 3. Further, in the past two Plan filings, all measures and programs that ComEd proposed for inclusion in the Plan were considered cost-effective and screened to satisfy the TRC test. This is the first Plan filing wherein ComEd proposes modified savings targets for every program year of its portfolio and it proposes to promote numerous cost-ineffective measures. Thus, the Commission has before it a critical policy decision to make in this docket.

In order to ensure ratepayers receive the net benefits they deserve, the Commission should order ComEd to limit the participation of cost-ineffective measures to no more than the levels proposed in its Plan. The Commission should require ComEd to provide cost-effectiveness screening results in its reports filed with the Commission for measures previously projected to be cost-ineffective that become cost-effective over the course of the Plan such that it will be clear that limitations on participation of these measures would no longer be warranted (e.g., LEDs). (Staff Ex. 1.0, 21.)

ComEd expresses concern about hindering program performance if ComEd was required to cap participation levels for certain non-residential prescriptive measures that may be cost-effective in ten out of twelve building types. (ComEd Ex. 3.0, 77.) Staff understands ComEd's concerns and notes that is not the intent of Staff's recommendation. To the extent a measure is cost-effective in the vast majority of building types to which it is directed and marketed to, ComEd need not attempt to limit participation of the measure within a program year. Staff believes Commission adoption of this particular exclusion would satisfy ComEd's concerns.

Staff's recommendation is not intended to arbitrarily limit the offering of programs and measures that could provide net benefits to customers, and it is not intended to curtail otherwise successful cost-effective joint programs ComEd offers with the gas utilities that may contain cost-ineffective measures. It is not Staff's intent for this limitation to curtail the implementation of cost-effective measures. In order to alleviate such concerns, if the Commission adopts Staff's recommendation, which it should, then the Commission should clarify that cost-ineffective measures that are a necessary component for implementing cost-effective measures (e.g., comprehensive whole home dual fuel programs) are excluded from such limitation.

There are a variety of ways in which ComEd can influence the level of adoption of certain measures if the Commission grants ComEd's request for flexibility. With respect to limiting to a particular level, Staff understands ComEd generally prefers to alter measure offerings on a program year basis. To the extent one of the cost-ineffective measures exceeds Plan 3 expectations in the first program year, ComEd could discontinue offering the measure in the second program year. The Company could adjust incentive levels and marketing of cost-ineffective measures in order to affect their adoption. ComEd could also include in their marketing that the measure is limited to the first 200 or X number of customers, so customers' expectations are appropriately set at the outset. These ways are simply part of ComEd's ongoing planning, management, and marketing practices which exist as part of ComEd's existing processes as described in ComEd's Plan. (ComEd Ex. 1.0, 101.) Staff's recommendation should not increase the costs necessary to implement and administer the portfolio. There are simple ways in which ComEd could limit excess adoption of cost-ineffective measures. None of these increases the costs to implement and administer the portfolio. Such alternatives are consistent with standard planning, management, and marketing practices described in ComEd's Plan.

Finally, to be clear, Staff is not advocating for such litmus test treatment of the TRC test as alleged by ComEd and NRDC. Indeed, Staff agrees with the some of the reasons NRDC describes for why it may be appropriate to include certain cost-ineffective measures in the Plan. (NRDC Ex. 2.0, 17-18.) These reasons do not include an unlimited promotion of such measures. Certain limitations on implementing cost-ineffective measures are appropriate, and if evidence exists that inclusion of the measure in a portfolio is both cost-ineffective and unlikely to serve some higher goal of establishing longer term, cost-effective robust efficiency savings, such measure should be excluded.

While ComEd states that past Commission Orders direct evaluating the TRC test at the portfolio level, it is important to note that the Commission has also seen the merit in evaluating the TRC test at other levels, and in fact the Commission never prohibited evaluating the TRC test at the measure or program level and explicitly found that "the utilities and DCEO are <u>not precluded</u> from applying the TRC test at the 'measure' or program level[.]" Plan 1 Order at 28 (emphasis added). ComEd's Plan 2 Order states: "The Commission further agrees with Staff that ComEd should continue to implement cost-effective measures in its programs, and directs ComEd to do so[.]" Plan 2 Order at 42. Indeed, in relatively recent Commission Orders, the Commission directed that a utility in its plan filing "must demonstrate at least a reasonable probability that [a program] will be cost-effective in the future and any proposal will be scrutinized carefully by the Commission." ICC Order Docket No. 12-0132 at 12 (Oct. 17, 2012). The Commission did not approve ratepayer funding for the CUB Energy Saver Program through the IPA's procurement because the proposed EE program was projected to be cost-ineffective. ICC Order Docket No. 12-0544 at 270-271 (Dec. 19, 2012). The Commission previously directed a utility not implement certain measures projected to be cost-ineffective in the Plan filing and the Commission agreed with Staff's proposal to require the utility to monitor projected benefits and costs of certain specific efficiency measures and to only market those specific measures if and when projected benefits exceed projected costs, when they are cost-effective. ICC Docket No. 08-0104 Order at 11 (Oct. 15, 2008).

In ICC Docket No. 10-0564, the Commission recognized that Section 8-104 does not require each measure to be cost-effective, rather it requires the entire portfolio to be cost-effective, excluding low income programs, in order to be approved by the Commission: "The Commission agrees with the Utilities that Section 8-104 does not require each measure to meet the TRC test, but it does require the portfolio (except for the low income portion) to meet the TRC test." ICC Order Docket No. 10-0564 at 92 (May 24, 2011). Staff is not questioning the Commission's finding in this regard and agrees that Section 8-103(f)(5) of the Act clearly specifies the "portfolio" must be cost-effective in order for the Commission to approve the Plan. 220 ILCS 5/8-103(f)(5). That being said, this minimum requirement for Plan approval does not prohibit the Commission from imposing more stringent requirements if they serve the public interest. Indeed, in ICC Docket No. 12-0132, the Commission, despite Section 8-408 of the Act specifying a minimum requirement of approval is for each "program" to be cost-effective, nevertheless imposed a more stringent requirement that the utility in future Plan filings "should only include measures shown to be cost-effective for Illinois ratepayers … unless extenuating circumstances are shown that would argue for inclusion of such measures or programs." ICC Order Docket No. 12-0132 at 17-18 (Oct. 17, 2012). It serves the public interest to impose such limitations. Staff provides an example below of why the Commission should impose such limitation in this proceeding.

1. Cost-Ineffective Retro-Commissioning Program

The Commission should order ComEd to closely monitor and report to the Commission for the RCx Program ex post cost-effectiveness results along with program modifications and updated cost-effectiveness projections.

ComEd's Retro-Commissioning ("RCx") Program has continuously produced negative net benefits to ratepayers since ComEd began implementing the program. (Staff Ex. 1.0, 23.) Based on this, it is critical for the Commission to impose certain limitations on ComEd's flexibility to ensure ratepayers receive the net benefits they deserve. ComEd explains:

> Early in its life cycle, the Retro-Commissioning program bore many costs that did not fully translate into large-scale savings during the Plan years in which they were incurred. During the rapid growth phase in the first four years of the program, methods and procedures were refined, reporting requirements were standardized, and processes for technical evaluation of program performance were fine-tuned. In addition, a network of engineering service providers was developed and educated. Beginning in PY4, ComEd partnered with two gas utilities to offer this program. This allowed the utilities to share administration and incentive costs on a given project, and has increased cost-effectiveness. In addition to these enhancements to cost effectiveness over the long term, ComEd has also transitioned from a time-and-materials billing arrangement in PY4 to a single, fixed fee per project to cover all program administration costs in PY5 with its program administrator, Nexant, which has provided ComEd with increased ability to manage and project program expenses and compare them to savings achieved.

(ComEd's Resp. to Staff DR JLH 3.19, 2.) In order to ensure ratepayers do not continue to suffer significant economic losses from this program, Staff believes a Commission directive to ComEd is necessary if ComEd is allowed to continue to offer this program in Plan 3. The Commission should direct that ComEd should closely monitor and report to the Commission for the RCx Program *ex post* cost-effectiveness results along with program modifications and updated cost-effectiveness projections. (Staff Ex. 1.0, 23.)

2. Cost-Effective Projects in the C&I Pilot and Flexibility

ComEd specifies that the "[p]rojects must be cost-effective on [a] TRC basis" for the proposed Large Commercial and Industrial ("C&I") Pilot Program. (ComEd Ex. 1.0, 82.) Given this assertion, it would be inappropriate and unreasonable for ComEd to start funding projects projected to be cost-ineffective as part of the Large C&I Pilot Program after Commission approval of the Plan. Given the parties are relying upon ComEd's proposed project-level cost-effectiveness requirements when reviewing the merits of the Large C&I Pilot Program as part of this Plan filing (and for which the Commission presumably would also be relying upon when determining whether to approve the Large C&I Pilot Program in this Plan filing), it would be unreasonable for ComEd to drastically change this critical element of the program after Commission approval of the Plan on the basis the Commission grants ComEd's request for flexibility. (Staff Ex. 1.0, 21-22.) This further demonstrates why a Commission directive to ComEd to limit participation levels of cost-ineffective measures in its Plan is necessary.

D. Evaluation Proceeding

The Commission should order ComEd to petition the Commission to initiate the three-year savings goal compliance proceeding once evaluation reports are available.

The Commission should order that the three-year and annual cost-effectiveness results by program shall be reviewed and reported to the Commission in the three-year savings goal compliance proceeding per Section 8-103(f)(7).

NRDC does not support ComEd's suggestion that there be only one evaluation docket every three years. (NRDC Ex. 1.0, 30.) Mr. Neme suggests that it is important to be clear about what progress is being made towards the savings goals and that savings assumptions be updated over the course of the three-year plan based on on-going evaluation work. Mr. Neme states that "annual evaluation dockets during which savings achieved the previous year are 'nailed down' and evaluation results are used to adjust assumptions for the following year should remain important." (NRDC Ex. 1.0, 30.) Staff agrees with the reasoning behind Mr. Neme's concerns. (Staff Ex. 3.0, 31.)

It is important to note that the annual savings docket is not the forum where evaluation results are considered for adjusting savings assumptions for the following year. (Staff Ex. 3.0, 31.) Annual adjustments of savings assumptions occur as part of the annual IL-TRM Update Process and through the annual IL-TRM Update proceeding. (Staff Ex. 3.2, 8.)

With respect to reporting savings achievements and program adjustments made by the utilities, it would be addressed by the adoption of Staff's recommendation that the Commission should direct ComEd to provide specific information in its reports to the Commission in order to ensure the Commission would be kept apprised of this information. (Staff Ex. 3.0, 32.)

In the event Staff's recommendation that ComEd should provide specific information in its reports to the Commission *is not* adopted, then Staff would support Mr. Neme's proposal that annual evaluation dockets should continue. However, if Staff's recommendation that ComEd should provide specific information in its written reports to the Commission *is* adopted, then the Commission's additional review during an annual evaluation docket may not be necessary as the Commission can stay apprised of program adjustments through ComEd's written reports, annual reconciliation proceedings, and annual TRM Update proceedings. (Staff Ex. 3.0, 32.)

XII. MISCELLANEOUS

A. SPENDING LIMITS

The calculated dollar amount for the spending limits for Plan 3 in the ComEd service territory is $156,953,018 (PY7), $158,676,480 (PY8), and $159,439,377 (PY9). (ComEd Ex. 2.1, 1.) The Commission should adopt these spending limits in this proceeding. (Staff Ex. 1.0, 13.)

B. BANKING COST OVERRUNS

Consistent with ComEd's previous Plan filings, ComEd again requests, "[t]he ability to seek recovery of prudently and reasonably incurred costs that incidentally exceed the spending screen in a given Plan year." (ComEd Ex. 1.0, 6.) The Commission previously approved this request as reasonable because the Commission believed that there may be situations in which it would be inevitable that *de minimus* cost overruns would occur and the Commission further noted that the statute provides no barrier to utilities to recover cost overruns. ICC Order Docket No. 07-0540 at 41 (Feb. 6, 2008) ("Plan 1 Order"); Plan 2 Order at 40. The Commission should approve ComEd's request in this regard for the same reasons it approved this request in past Plans. (Staff Ex. 1.0, 13.)

C. SPEND ALL FUNDING TO THE EXTENT PRACTICABLE

Given ComEd requests modified savings goals for each program year of the Plan, ComEd should be directed to spend all funding available within the spending limits to the extent practicable on cost-effective EE measures.

It may not be possible for ComEd to spend all funding for two reasons. First, it seems unreasonable to expect ComEd to have the exact knowledge before the end of the program year concerning which EE projects will be completed in time. (Staff Ex. 1.0, 13-14.) Second, it is not possible for ComEd to know early enough in the program year the realized gross savings verified by the Evaluators that is necessary to calculate the exact payment to the implementers for certain of ComEd's pay-for-performance contracts with its implementers, and such realization rates are not part of ComEd's Realization Rate Framework in any event. (Staff Ex. 1.0, 14.) Nevertheless, the Commission should encourage ComEd to use leftover money to implement cost-effective EE measures rather than shut down the EE programs which could have a chilling effect on customer participation and enrollment. *See, e.g.,* Plan 2 Order at 54. This approach would support banking and the steady flow of EE programs. Customers will benefit by ComEd exceeding the modified energy savings goals by pursuing additional cost-effective measures. A Commission directive to this effect is necessary as ComEd has consistently spent less than the spending screen amount despite Commission approval of this maximum amount in past Plans. (*See, e.g.,* ComEd Ex. 1.0, 109; <u>ComEd Ex. 2.0</u>, 2:40-43, 24:520-526, ICC Docket No. 13-0529.) For example, during PY5, ComEd underspent by $16.9 million. (Staff Ex. 1.0, 14.)

The Commission has previously stated that "[a]s the energy efficiency programs continue to evolve, the Commission hopes the Utilities will take steps to achieve the greatest amount of participation and energy savings possible using the most current information and resources at its disposal." ICC Order on Rehearing Docket No. 13-0077 at 18 (Oct. 2, 2013).

Staff's recommendation is consistent with this directive and should be adopted.

D. BREAKTHROUGH EQUIPMENT AND DEVICES

The Commission should define breakthrough equipment and technologies as "measures or programs in their early stage of development that are subject to substantial uncertainty about their cost-effectiveness during the planning period."

Staff recommends the Commission define breakthrough equipment and technologies as "measures or programs in their early stage of development that are subject to substantial uncertainty about their cost-effectiveness during the planning period." (Staff Ex. 1.0, 26.) ComEd agrees with NRDC that no definition is needed and no problem exists. (NRDC Ex. 2.0, 20; ComEd Ex. 3.0, 23-24.) ComEd states that Ms. Hinman's proposal appears to be a "solution in search of a problem" yet proposes an alternative definition. (ComEd Ex. 3.0, 24.) Staff disagrees with ComEd and NRDC that no definition is needed and continues to urge the Commission to adopt its proposed definition. Staff has concerns about the practice of splitting costs between this cost category and others in reconciliation proceedings. (Staff Ex. 2.0, 14 (fn 31), ICC Docket No. 10-0537; ComEd Ex. 2.0, 14 (fn 1), 15:318-320, 16:349-17:354, ICC Docket No. 11-0646.) If the cost can fall within the definition of breakthrough equipment and devices and some other cost category, then the entire cost should be classified under the category of breakthrough equipment and devices. Staff notes that DCEO adopted Staff's proposed definition in the current Docket No. 13-0499. (ICC Docket No. 13-0499, DCEO Draft Proposed Order, 26.) For purposes of consistency, the Commission should adopt Staff's definition in all these EE Plan dockets.

E. DEMAND RESPONSE

The Company proposes to meet its demand-response goal for reducing peak demand through its proposed residential EE measures. (ComEd Ex. 1.0, 59.) ComEd's Plan demonstrates its proposed energy efficiency and demand-response measures will achieve the requirements that are identified in Section 8-103(c) of the Act. (Staff Ex. 1.0, 17.)

1. The Commission should reject CUB/City's proposal to include Demand Response programs.

CUB-City recommends "that ComEd investigate potential demand response programs that could meet the statutory requirements, especially those that relate to AMI deployment, discuss these programs with the SAG, and include these programs in a Revised Plan the Company submits to the Commission for approval." (CUB/City Ex. 1.0, 24.) The CUB-City proposal should be rejected. It is procedurally infeasible as it would have ComEd submitting a revised Plan that includes Demand Response programs that were not reviewed and vetted as a part of this proceeding. (Staff Ex. 4.0, 2.) ComEd is proposing budgets that reach the statutory spending limits. Including a Demand Response program as proposed by CUB-City is not merely supplementing ComEd's portfolio with an additional program, it requires funding to be diverted from other programs Id. ComEd agreed with Staff's recommendation. (ComEd Ex 3.0, 41-42.)

F. RESIDENTIAL LIGHTING CUSTOMER EDUCATION

The Commission should direct ComEd to ensure proper customer education in the residential lighting market in its service territory as it relates to the impact of EISA and the energy savings associated with CFLs. Given customers have access on the package to the benefits of CFLs over the standard incandescent light bulbs, ComEd's in-store marketing materials, point-of purchase communications, end-caps, and other displays should educate customers about the benefits and cost-savings of installing CFLs over the new EISA-compliant halogen light bulbs.

Among the elements of ComEd's marketing of lighting is a comparison of electricity use between ENERGY STAR® compact fluorescent lamps ("CFLs") to standard incandescent light bulbs. (Staff Ex. 1.0, 42.) As noted in the IL-TRM, "[f]ederal legislation stemming from the Energy Independence and Security Act of 2007 [("EISA")] will require all general-purpose light bulbs between 40 and 100W[atts] to be approximately 30% more energy efficient than current incandescent bulbs." (ComEd Ex. 1.0 Appendix C, 424.) EISA began phasing in new manufacturing requirements on January 1, 2012. (ComEd Ex. 1.0, 14; ComEd Ex. 1.0 App. C, 424.) As of January 1, 2013, light bulbs with lumen output previously associated with 100-Watt standard incandescent light bulbs required 72 Watts or fewer and bulbs previously associated with 75-Watt incandescent light bulbs required 53 Watts or fewer in order to be manufactured in the United States. On January 1, 2014, similar manufacturing requirements will go into effect for light bulbs that previously produced lumens associated with 60- and 40-Watt standard incandescent light bulbs.

ComEd's proposed customer education and marketing approach focuses on the savings (e.g., 75% less electricity) and benefits (e.g., bulbs last up to 10 times longer) customers purchasing CFLs achieve compared to non-EISA compliant incandescent bulbs. (ComEd Ex. 1.0, 32.) Since the phase-in of EISA, 72-Watt halogen light bulbs exist that look like standard incandescent light bulbs and have short lifetimes similar to that of incandescent light bulbs. Currently, manufacturers are advertising these halogen light bulbs as energy efficient. This characterization is misleading to customers given that wattages that exceed the halogen wattages violate the EISA standard law, so these halogen light bulbs are, in fact, the least efficient (or most energy consuming) compliant light bulbs. (Staff Ex. 1.0, 43.) In contrast, CFLs use less than a quarter as much power and generally last over five times as long as the halogen light bulbs. (*See,* IL-TRM, ComEd Ex. 1.0 Appendix C, 424-429; Staff Ex. 1.0, 43-44.) The cost savings from purchasing a CFL instead of a halogen light bulb is significant, greater in fact than the savings from moving from an incandescent light bulb to a halogen. (IL-TRM, ComEd Ex. 1.0 Appendix C, 429.)

As a program administrator, ComEd should ensure proper customer education in the residential lighting market in its service territory as it relates to the impact of EISA and the energy savings associated with CFLs. It is Staff's understanding that the labels on the packages of CFLs already compare the cost savings of CFLs to traditional standard incandescent light bulbs. Given customers have access on the package to the benefits of CFLs over the standard incandescent light bulbs, ComEd's in-store marketing materials, point-of purchase communications, end-caps, and other displays should educate customers about the benefits and cost-savings of installing CFLs over the new EISA-compliant halogen light bulbs. (Staff Ex. 1.0, 44.)

G. FINANCING WORKSHOPS

The Commission should not direct Staff to conduct workshops concerning additional financing mechanisms.

ELPC recommends that the "Commission should instruct its staff to conduct a workshop and that the SAG and ComEd review the feasibility and likely impact from the amortization/capitalization of energy efficiency and demand response resources. The SAG and ComEd should submit recommendations to the Commission within six months of the issuance of the Order in this proceeding." (ELPC Ex. 1.0, 19-20.) ELPC further suggests that "the Commission instruct the Staff to conduct a workshop and ComEd and the SAG to review and prepare recommendations to the Commission regarding the use of alternative financing option." (ELPC Ex. 1.0, 23.) Staff urges the Commission to reject ELPC's proposal. (Staff Ex. 3.0, 30.)

The basis of ELPC's recommendations appears to be that "funds available to ComEd as well as its customers in the form of incentives is beginning to become a significant impediment to ComEd's ability to meet the statutory targets." (ELPC Ex. 1.0, 18.) ELPC ignores the fact that additional efforts are already underway to increase savings. (Staff Ex. 3.0, 30.) In particular, Section 16-111.5B of the Act provides a mechanism for the Commission to approve, as part of the annual procurement plan proceedings, expansion of cost-effective Section 8-103 EE programs and new cost-effective EE programs that are incremental to the Section 8-103 EE efforts. Section 16-111.5B EE programs are not subject to budget constraints, unlike Section 8-103 EE programs. Currently, there is an ongoing procurement plan proceeding before the Commission to consider approving Section 16-111.5B EE programs. In that docket, the IPA is recommending Commission approval of a non-trivial $168 million to implement eight EE programs in ComEd's service territory for program years ("PY") 7-9, where program year 7 begins June 1, 2014. (2014 Procurement Plan, 88, ICC Docket No. 13-0546.) Additionally, Section 8-103 of the Act allows for modifying the statutory targets if the goals cannot be achieved within the spending limits. 220 ILCS 5/8-103(d). One key reason that the proposed level of savings will fall short of the statutory targets is due to the statutory budget restrictions. (Staff Ex. 3.0, 30.)

Finally, past Commission findings support Staff's position. In particular, ComEd's EE Plan 2 Order states:

> The Commission further finds that there is no basis for requiring a utility subject to Section 8-103 to procure additional funding outside of the cost recovery mechanism authorized by Section 8-103. In the Commission's view, Section 8-103 does not contemplate such outside funding. Rather, the statutory framework contemplates funding of the measures through the Commission-approved tariff mechanism and a reduction in measures and goals to the extent the budgets constrain the utility's ability to achieve the goals.

ICC Order Docket No. 10-0570 at 36 (Dec. 21, 2010) ("Plan 2 Order") (emphasis added).

Given additional efforts are already underway to increase savings based on the additional funding allowed by Section 16-111.5B of the Act and that the statute clearly allows for modified savings goals, the Commission should decline to direct Staff to conduct workshops concerning additional financing options. (Staff Ex. 3.0, 30-31.) While ComEd does not object to ELPC's proposal, Staff objects on the basis that limited SAG and Staff resources should not be diverted to such an investigation that is not related to any statute at issue in this proceeding. (ComEd Ex. 3.0, 29.) Staff anticipates hosting workshops concerning Section 16-111.5B EE programs in the coming year and believes these workshops will address issues related to ensuring greater energy savings is achieved (e.g., improvements to the annual solicitation process) through the Section 16-111.5B EE programs. (ALJPO, 146, ICC Docket No. 13-0546.)

H. TRM Measure Codes

The Commission should direct the Company to include the IL-TRM measure codes in its Plan filing in the future for ease of review. (Staff Ex. 1.0, 27.)

I. Summary of Evaluation Recommendations

In summary, certain modifications to ComEd's proposed evaluation process should be adopted to help ensure the independence of the evaluators and to improve efficiency. (Staff Ex. 1.0, 24.) In particular, the Commission should approve ComEd's evaluation process proposed in its Plan with the following modifications:

1. IL-TRM measure-level evaluation research (ComEd Ex. 1.0, 10) shall be a high priority.

2. Staff's proposed Modified Illinois NTG Framework (Staff Ex. 1.1) shall be adopted.

3. ComEd's proposed Realization Rate Framework (ComEd Ex. 1.0, 110) shall not be approved.

4. The independent evaluation contract and scope of work shall be filed in this docket within fourteen days of execution consistent with the approach adopted in the Plan 1 Order.

5. ComEd shall petition the Commission to initiate the three-year savings goal compliance proceeding (ComEd Ex. 1.0, 5) once evaluation reports are available.

6. Three-year and annual cost-effectiveness results by program shall be reviewed and reported to the Commission in the three-year savings goal compliance proceeding per Section 8-103(f)(7).

> 7. Consistent NTG methodologies shall be used in evaluations across comparable programs with other Illinois program administrators. (ComEd's Resp. to Staff DR JLH 2.07 SUPP; Staff Ex. 3.0, 6-8, ICC Docket No. 13-0499.)
>
> 8. The SAG shall also receive draft copies of evaluation reports contemporaneously with ComEd and Staff.
>
> 9. Free-ridership shall be included in NTGR calculations even if spillover is not. (*See,* Staff Ex. 2.0.)
>
> 10. ComEd shall not accumulate banked savings from PY1-PY6 to be applied in PY7 per Section 8-103(b) of the Act.[9]
>
> 11. The issue concerning whether to allow savings achieved in excess of the modified Plan 3 savings goals to be applied in PY10 shall not be determined in this proceeding, but may be addressed in ComEd's Plan 4 proceeding.

(Staff Ex. 1.0, 25-26.)

XIII. CONCLUSION

For the reasons set forth above Staff respectfully requests that the Commission's Final Order in the instant proceeding reflect Staff's recommendations consistent with this Initial Brief.

---

[9] Section 8-103(b) states in relevant part: "[e]lectric utilities may comply with this subsection (b) by meeting the annual incremental savings goal in the applicable year or by showing that the <u>total cumulative annual savings within a 3-year planning period</u> associated with <u>measures implemented after May 31, 2014</u> was equal to the sum of each annual incremental savings requirement <u>from May 31, 2014 through the end of the applicable year</u>." 220 ILCS 5/8-103(b) (emphasis added.)

Respectfully submitted,

JESSICA L. CARDONI
MATTHEW L. HARVEY
KELLY A. TURNER
Office of General Counsel
Illinois Commerce Commission
160 North LaSalle Street
Suite C-800
Chicago, Illinois 60601
(312) 793-2877

Counsel for the Staff of the Illinois Commerce Commission

December 13, 2013